

## INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations are Necessary

Section 31-001.32Specific Purpose:

This section is modified to inform social workers of state policies regarding the provision of services to Indian children as integrated throughout the Division 31 regulations in Chapters 31-000 through 31-500. This change is made to remove the cross references to prior provisions and requirements related to the Indian Child Welfare Act (ICWA) of 1978 [Public Law (P.L.) 95-608] codified at Title 25 of the United States Code (U.S.C.) section 1901, et. seq. which are currently in the Manual of Policies and Procedures (MPP) sections 31-515 and 31-520. The ICWA requirements will now be included throughout the MPP Division 31 regulations so that social workers are made aware of their duty to comply with the specific requirements of ICWA and its correlating California statutes at the various decision making points of a child welfare case.

Factual Basis:

This section is necessary to inform and clarify for, social workers regarding practice requirements that Senate Bill (SB) 678 (Chapter 838, Statutes of 2006) added in Welfare and Institutions Code (WIC) section 224 related to legislative findings on the application of ICWA in California.

Until now, the minimum federal standards for Indian child custody proceedings as required in the ICWA were separated from the rest of Division 31 regulations into Sections 31-515 and 31-520. Current references in Sections 31-515 and 31-520 for compliance with ICWA are no longer sufficient because of the more extensive and/or higher specification of standards enacted by Senate Bill (SB) 678 (Chapter 838, Statutes of 2006), which incorporated ICWA into the Welfare and Institutions, Family and Probate Codes. Assembly Bill (AB) 1325 (Chapter 287, Statutes of 2009) on Tribal Customary Adoptions, AB 2418 (Chapter 468, Statutes of 2010) changing the definition of an Indian child per California law, SB 1460 (Chapter 772, Statutes of 2014) adding provisions related to Tribally Approved Homes and the transfer of information to tribes and recently promulgated 45 Code of Federal Regulations (CFR) part 1356.67 regarding the transfer of Indian children to tribal Title IV-E programs by state agencies. In order to assure compliance with these significant statutes, the regulations will now reference Indian child welfare requirements throughout the regulations to promote and assure compliance throughout the life of an Indian child's case.

Further, feedback from social workers, tribal representatives and other stakeholders has been that keeping the ICWA related standards and requirements separate from the rest of Division 31 in Sections 31-515 and 31-520, diminishes knowledge, understanding and compliance with ICWA and the cited laws and regulations. The alternatives that California Department of Social Services (CDSS) has used have included All County Letters (ACLs) or All County Information Notices (ACINs) on the above referenced laws and regulations. However, ACLs or ACINs are less effective than regulations, as they can be overlooked or not uniformly distributed to line staff. Therefore by incorporating these requirements throughout the regulations and providing for standardized application will promote compliance with the critical requirements associated with Indian children.

#### Section 31-001.33

##### Specific Purpose:

This section is adopted to inform social workers of state policy on the "best interest" standard for Indian children to encourage and protect their connection to their tribe and tribal community, regardless of whether the child is in the physical custody of the Indian parent(s) or Indian custodian(s) at the commencement of the proceeding, whether the parental rights of the child's parent have been terminated or regardless of where the child resides.

##### Factual Basis:

This section is necessary because SB 678 added WIC section 224 related to legislative findings on the application of ICWA in California. This section is adopted to insure that the best interest standard specifically applicable to Indian children is made clear and implemented.

#### Sections 31-001.34 through .36 Renumbered from Sections 31-001.33 through .35

##### Specific Purpose/Factual Basis

These sections are being renumbered in sequence from Sections 31-001.33 through 31-001.35 to Sections 31-001.34 through 31-001.36 to accommodate the adoption and insertion of Section 31-001.33, as referenced above.

### Section 31-002(a)(1)

#### Specific Purpose:

This section is adopted to provide a definition of "active efforts" to add consistency and understanding of the requirement as applicable to the provision of remedial efforts to prevent the removal of an Indian child. It is also amended to specify the augmentation in California law of active efforts to comply with ICWA placement preferences as set forth in WIC section 361.31(k). The SB 678 further added that there is to be documentation of active efforts to comply with ICWA placement preferences thereby augmenting the protections of ICWA. Additionally, feedback from social workers and stakeholders, including tribal representatives, has been that it is not always clear what comes within the umbrella of "active efforts." Instead of duplicating language, this section cross references those sections within the regulations that further clarify the application of "active efforts" as adopted in California.

#### Factual Basis:

The adoption of this section is necessary to provide clarity by providing a definition that is consistent with the ICWA at 25 U.S.C. section 1912(d) and WIC sections 361.31(k) and 361.7.

### Sections 31-002(a)(2) through (11) Renumbered from Sections 31-002(a)(1) through (10)

#### Specific Purpose / Factual Basis:

These sections are renumbered in sequence from Sections 31-002(a)(1) through 31-002(a)(10) to Sections 31-002(a)(2) through 31-002(a)(11) to accommodate the adoption and insertion of Section 31-002(a)(1), as referenced above, to provide consistency of an alphabetized list of definitions.

## Sections 31-002(f)(8)(G) and (H)

### Specific Purpose:

The adoption of this section is necessary to provide clarity that the definition of a foster care placement can include a home that is "licensed, approved or specified" by an Indian child's tribe per provisions in ICWA and state law. The regulations provide separate definitions for a "tribally specified" and a "Tribally Approved Home." Feedback from social workers and stakeholders, including tribal representatives, indicates confusion on whether Tribally Approved Homes are authorized foster care placement options and also confusion on the distinction between a tribally specified home and Tribally Approved Home. The amendment is consistent with the ICWA Sections 1915(b)(iii) and 1931(b); and the CFR which includes the definitions of foster care at Title 45, section 1355.20. Tribally Approved Homes are authorized placement options as specified in WIC section 361.2(e)(7). This further clarifies that Tribally Approved Homes are exempt from Community Care Licensing (CCL) requirements pursuant to Health and Safety Code (HSC) section 1505(o) and are eligible for Title IV-E foster care funding.

### Factual Basis:

This section is adopted to include within the "foster care" definition, a tribally "licensed, approved or specified" home in the case of an Indian child as provided for in ICWA, at 25 U.S.C. section 1931(b).

## Section 31-002(i)(3)(A)

### Specific Purpose:

This section is amended to make consistent the definition of an Indian child with the definition in ICWA.

### Factual Basis:

This is a technical amendment to make the definition in the regulations consistent with the definition of Indian child in ICWA at 25 U.S.C. section 1903(4) and as provided for in Section 30 of SB 678 which added WIC section 224.1(a) pertaining to definitions related to Indian child custody proceedings. This regulation is a substantial duplication of 25 U.S.C. section 1903(4) and WIC section 224.1(a), which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Section 31-002(i)(3)(A)1.

Specific Purpose:

This section is adopted to provide that when a dependency case continues beyond age 18, the child will continue to be defined as an Indian child and ICWA standards will continue to apply, unless the youth or the youth's attorney on behalf of the youth, elects to no longer have the ICWA standards applied in their case. As codified in WIC section 224.1(b), AB 2418, Section 1, expands the definition of an Indian child to continue up to age 21 and thus continues to provide protections to tribes, families and children in certain custody proceedings involving Indian children who are no longer minors, but are still under the jurisdiction of the dependency court. By expanding the definition of an Indian child, AB 2418 expanded the application of ICWA. This regulation further incorporates the provision from the statute that allows a child or an attorney on the child's behalf to choose to no longer have ICWA applied to the case.

Factual Basis:

This section is necessary because social workers need to be aware that ICWA would continue to apply where an Indian child's dependency case remains under the court's jurisdiction beyond age 18. The adoption of this section is necessary to inform and provide clarification on the application and effect of changes made by AB 2418 (Chapter 468, Statutes of 2010) Section 1, regarding the definition of an Indian child. This regulation is a substantial duplication of WIC section 224.1(b) as amended by AB 2418 which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Handbook Section 31-002(i)(3)(A)1.

Specific Purpose/Factual Basis:

This handbook section is included to provide ease of field use and reference. This section specifies the provisions of WIC section 224.1(b).

Section 31-002(i)(3)(C)

Specific Purpose:

This section is amended for clarity by making the definition of Indian child's parent consistent with the definition in the ICWA.

Factual Basis:

This is a technical amendment necessary to provide clarity and consistency in the definition of an Indian child's parent with ICWA, at 25 U.S.C. section 1903(9). This regulation is a substantial duplication of 25 U.S.C. section 1903(9) and as codified in WIC section 224.1(b), which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Section 31-002(i)(3)(E)

Specific Purpose:

This section is adopted to provide a definition of the "Indian Child Welfare Act (ICWA)" to add consistency and understanding of the term. The inclusion of the definition provides clarity, consistency and understanding whenever the term Indian Child Welfare Act, stated in Chapter 21, Title 25 U.S.C., or its acronym "ICWA" is used throughout these regulations and commonly in practice among the tribes, courts and counties of California.

Factual Basis:

This section is necessary to clarify that ICWA is federal legislation codified at 25 U.S.C. section 1901, et seq.

Section 31-002(i)(3)(F) Renumbered from Section 31-002(i)(3)(E)

Specific Purpose:

The definition of Indian custodian is amended to include the word "person" after the word Indian. This section is renumbered from Section 31-002(i)(3)(E) to Section 31-002(i)(3)(F) due to adopting the "ICWA" definition and inserting it in alphabetical order as Section 31-002(i)(3)(E).

Factual Basis:

This is a technical amendment to make the definition of Indian custodian consistent with ICWA 25 U.S.C. section 1903(6) and is renumbered to be consistent with the numbering sequence of this section.

Section 31-002(i)(3)(G) Renumbered from Section 31-002(i)(3)(F)

Specific Purpose / Factual Basis:

This section is renumbered from Section 31-002(i)(3)(F) to Section 31-002(i)(3)(G) due to adopting the "ICWA" definition it in sequence and inserting in alphabetical order as Section 31-002(i)(3)(E).

Section 31-002(i)(3)(H) Renumbered from Section 31-002(i)(3)(G)

Specific Purpose / Factual Basis:

This is a technical amendment to make the definition of Indian tribal court consistent with the definition in ICWA and to correct the definition by removing "recognized by the Secretary of the Interior," and replacing "jurisdiction" with "authority" in accordance with the definition of Indian tribal court found in ICWA 25 U.S.C. section 1903(12). This section is renumbered from Section 31-002(i)(3)(G) to Section 31-002(i)(3)(H) due to adopting "ICWA" definition in sequence and inserting in alphabetical order as Section 31-002(i)(3)(E).

Section 31-002(i)(3)(I) Renumbered from Section 31-002(i)(3)(H)

Specific Purpose / Factual Basis:

This section is renumbered from Section 31-002(i)(3)(H) to Section 31-002(i)(3)(I) due to adopting "ICWA" definition in sequence and inserting in alphabetical order as Section 31-002(i)(3)(E).

Section 31-002(n)(3)

Specific Purpose:

The adoption of this section adds a definition for a "Non-federally recognized tribe."

Factual Basis:

California has over 109 federally recognized tribes and an estimates of non-federally recognized tribes minimally range from 35 to 65. The inclusion of a definition for a "non-federally recognized tribe" is necessary to provide clarity and consistency of understanding of what is a non-federally recognized tribe as provided in SB 678, Section 45, which added WIC section 306.6 to permit, at the discretion of a dependency court, that a non-federally recognized tribe may participate in what would otherwise be an ICWA covered child custody proceeding. The ICWA applies to children from federally recognized tribes pursuant to ICWA, U.S.C. section 1903(8). Children belonging to non-federally recognized tribes are thus otherwise excluded from the protections of ICWA.

Section 31-002(n)(4) Renumbered from Section 31-002(n)(3)

Specific Purpose / Factual Basis:

This section is renumbered from Section 31-002(n)(3) to Section 31-002(n)(4) due to adopting "non-federally recognized tribe" definition and inserting in alphabetical order as Section 31-002(n)(3).

#### Section 31-002(p)(3)

##### Specific Purpose:

This section is amended to include Tribal Customary Adoption as a permanency alternative for Indian children.

##### Factual Basis:

This amendment is necessary to include Tribal Customary Adoption as an additional permanency alternative for Indian children as authorized by AB 1325 (Chapter 287, Statutes of 2009), Section 12, which established WIC section 366.24.

#### Section 31-002(p)(8)

##### Specific Purpose:

This section is amended to expand the definition of pre-placement preventive services to include the duty to conduct active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian child's family.

##### Factual Basis:

The amendment to this section is necessary to clarify that there is a duty to engage in active efforts as part of pre-placement preventive services for an Indian child. This is consistent with active efforts as required by ICWA at 25 U.S.C. section 1912(d), WIC section 361.7(b) and in California Rules of Court, rule 5.484(c).

#### Section 31-002(q)(1)

##### Specific Purpose:

This section is adopted to provide a definition for a "qualified expert witness" to add consistency and understanding throughout the regulations.

##### Factual Basis:

This section is adopted because it is necessary to provide clarity and consistency in identifying who can be considered an expert witness and to better implement the qualified expert witness requirement when there is a proposed foster care placement or proposed termination of parental rights (TPR) of an Indian child as specified by ICWA at 25 U.S.C. section 1912(e) and in WIC sections 224.6, 361(c)(6), 361.31(f) and 361.7(c).



#### Section 31-002(t)(7)

##### Specific Purpose:

This section is adopted to provide a definition for "Tribal Child Welfare Agency" as specifically applicable to a tribal agency authorized to conduct criminal and child abuse background checks for the purpose of foster or adoptive placement in Tribally Approved Homes.

##### Factual Basis:

This section is necessary to inform social workers regarding the specific definition and context in which a Tribal Child Welfare Agency is authorized to clear individuals for the purpose of foster or adoptive placement of an Indian child. SB 1460 (Chapter 772, Statutes of 2014) enacted Penal Code section 11105.08 and amended Section 11170(b)(8) to authorize a Tribal Child Welfare Agency to receive criminal and child abuse background information for the purpose of clearing individuals for foster or adoptive placement of Indian children. Section 10553.12 of the WIC enacted by Section 15 of SB 1460 defines a Tribal Child Welfare Agency as applicable to tribal agencies with authority to receive criminal and child abuse information and approve foster or adoptive homes for Indian children.

#### Section 31-002(t)(8)

##### Specific Purpose:

This section is adopted to provide a definition for "Tribal Customary Adoption (TCA)" and to provide consistency and understanding throughout the regulations.

##### Factual Basis:

Tribal Customary Adoption is a permanency alternative for dependent Indian children authorized by AB 1325 (Chapter 287, Statutes of 2009) and WIC section 366.24. Feedback from social workers and stakeholders, including tribal representatives, has been that there is a need in regulation to provide guidance on when assessments and consideration of Tribal Customary Adoptions must be made throughout the life of an Indian child's case. Tribal Customary Adoptions becomes an option for an Indian child as early as the dispositional hearing; social worker assessments and consultation with the tribe continue through to the finalization of the adoption.

#### Section 31-002(t)(9)

##### Specific Purpose:

This definition is adopted to provide a definition for "Tribal Temporary Assistance to Needy Families (TANF)."

Factual Basis:

This section is necessary and adopted to define Tribal TANF to clarify use by social workers. This term is used to clarify culturally appropriate services that may be available to Indian families when active efforts are utilized to the prevent breakup of the Indian family.

Section 31-002(t)(10)

Specific Purpose:

This definition is adopted to provide a definition for a "Tribal Title IV-E Agency" to inform and clarify that there are tribes, consortium of tribes or tribal organizations that have entered into agreements with either the state or federal government to have oversight of their own foster care program and to draw down Title IV-E funding for cases of Indian children in their care.

Factual Basis:

The adoption of this section is necessary so that social workers are aware and understand that there are and will be tribes or tribal organizations that have such agreements as noted above. This addition is consistent with the provisions in WIC section 10553.11, which authorizes the Director of the Department of Social Services to enter into Title IV-E agreements.

Section 31-002(t)(11)

Specific Purpose:

This definition is adopted to provide a definition for a "Tribally Approved Home" and for consistency and understanding throughout the regulations and in practice. Further, this clarifies that "Tribally Approved Homes" are not subject to state licensing requirements for foster care and are an option for placement of the Indian child.

Factual Basis:

The adoption of this definition is necessary to clarify that a "Tribally Approved Home" is a home approved, licensed or specified by the tribe of the Indian child that is the subject of the child custody proceeding. While guidance has been provided through ACIN number I-86-08, it is not an effective alternative because the ACIN does not have the strength of regulations. This definition is consistent with the ICWA Sections 1915(b)(ii) and 1931(a)(1) of Title 25 U.S.C., 45 CFR part 1355.20 and HSC section 1505(o)(1) and (2). Such homes are authorized placement options as "foster homes" in accord with 25 U.S.C. section 1915, which provide that tribes can approve or specify homes for the placement of Indian children.

## Section 31-002(t)(12)

### Specific Purpose:

This section is adopted to add the definition of "Tribally Specified Home." This definition was added to provide clarification of the term for social workers and to differentiate between "Tribally Approved Homes" and "Tribally Specified Homes." It is referred to extensively when discussing placement preferences according to ICWA. It has been expressed by county and tribal representatives that there is a need for clarification on the distinction between a "Tribally Specified Home" and a "Tribally Approved Home." In practice, a tribe can specify a home that can come from multiple potential placement options including a home that the tribe has licensed. For example, a tribe can license a home and specify that home as its preference for the placement of its tribe's child. In another scenario, the tribe may accept a home licensed by the state or county as the appropriate placement option which meets the needs of the child.

### Factual Basis:

This definition is consistent with the ICWA, 25 U.S.C. sections 1915(b)(ii) and 1931(a)(1), 45 CFR part 1355.20 and HSC sections 1505(o)(1) and (2). Such homes are authorized placement options as "foster homes" in accord with WIC section 361.2(e)(7) and 25 U.S.C. section 1915, which provide that tribes can approve or specify homes for the placement of Indian children.

## Section 31-003(a)

### Specific Purpose:

This section is adopted to incorporate by reference a form that is used by the responsible public worker (department or county adoptions workers) to determine if a child meets the eligibility requirements for Adoption Assistance Program (AAP) benefits under federal Title IV-E or state/non-federal funding. The AAP 4 form (Eligibility Certification Adoption Assistance Program) is required and no substitutes are permitted.

### Factual Basis:

The adoption of this form is necessary because the AAP 4, the Eligibility Certification Adoption Assistance Program is a required form to ensure that the child being placed for adoption is eligible to receive benefits under the Adoption Assistance Program. This is necessary to comply with WIC section 16118 which requires the department to adopt regulations to carry out the provisions therein, and WIC section 16120 which provides the AAP eligibility determination requirements. This form is also consistent with the state regulations specified in California Code of Regulations Title 22 section 35326. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>,

### Section 31-003(f)(1)

#### Specific Purpose:

This section is adopted to incorporate by reference the form "FC 2 Statement of Facts Supporting Eligibility for Aid to Families with Dependent Children (AFDC) Foster Care (FC)" that is used to gather facts from the parent or relative that are used to determine if a child meets the eligibility requirements foster care benefits under the Aid to Families with Dependent Children (AFDC) Foster Care (FC). The FC 2 form is required and no substitutes are permitted.

#### Factual Basis:

The adoption of the FC 2 form is necessary because the county is required to establish that a child being placed in foster care meets the eligibility requirements for AFDC-FC. This is necessary to comply with the statutory and regulatory requirement of the federal foster care program as specified in 45 CFR parts 1356.21, 1356.22 and 1356.30, and 42 U.S.C. sections 672, 675(1), 675(4), 675(5) and 675(6). This form is designed specifically for the AFDC-FC Program and is completed at the initial intake by the social worker or placement worker to obtain information to determine eligibility and when eligibility is re-determined by the social worker for continued eligibility. This form is consistent with MPP section 45-201.7 which specifies that at the time of the six month redetermination, the parent or legal guardian shall complete the "Statement of Facts Supporting Eligibility for Assistance" (CA 2 1/87) or, at county option, the "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" (FC 2). If the parent or legal guardian is unavailable or uncooperative, the placement worker shall complete the "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" (FC 2). This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>.

### Section 31-003(f)(2)

#### Specific Purpose:

This section is adopted to incorporate by reference the FC 3 "Determination of Federal AFDC-FC" form that is used to determine if a child meets the eligibility requirements foster care benefits under the Aid to Families with Dependent Children (AFDC) Foster Care (FC). The FC 3 form is required and substitutes are permitted.

Factual Basis:

The adoption of this form is necessary because the FC 3 "Determination of Federal AFDC-FC" is required to establish if a child being placed in foster care meets the eligibility requirements for AFDC-FC. The worker utilizes the information obtained from the FC 2 "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" to complete the FC 3 to confirm that the AFDC-FC eligibility determination requirements have been met. This form is also consistent with MPP section 45-201 which specifies that at the time of the initial application and the six month redetermination, the parent or legal guardian shall complete the "Statement of Facts Supporting Eligibility for Assistance" (CA 2 1/87) or, at county option, the "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" (FC 2). If the parent or legal guardian is unavailable or uncooperative, the placement worker shall complete the "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" (FC 2). This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>.

Section 31-003(f)(3)

Specific Purpose:

This section is adopted to incorporate by reference the FC 3A "(Supplement) AFDC-FG/U Worksheet" form [Family Group/Unemployable (FG/U)] that is used by the responsible worker (commonly the eligibility worker) to determine if a family is eligible for AFDC-FG/U, based on their income. The FC 3A form is required and substitutes are permitted.

Factual Basis:

The adoption of this form is necessary because the FC 3 A "(Supplement) AFDC-FG/U Worksheet" is required to establish if a family eligible for federal AFDC-FG/U according to the AFDC rules in the month of petition (as it existed July 16, 1996). The worker utilizes the information obtained from the FC 2 "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" to complete the FC 3 A to confirm that the AFDC-FC eligibility determination requirements have been met. This form is also consistent with MPP section 45- 201 which specifies that at the time of the initial application and the six month redetermination, the parent or legal guardian shall complete the "Statement of Facts Supporting Eligibility for Assistance" (CA 2 1/87) or, at county option, the "Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC)" (FC 2). This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>.

Section 31-003(i)(1):

Specific Purpose:

This section is adopted to incorporate by reference the ICPC 100A "Interstate Compact On The Placement Of Children (ICPC) Request" form that is used by the CDSS State Deputy Compact Administrator, County ICPC Liaisons, Adoptions District Offices, Public Placing Agencies seeking to make an interstate placement of a child, or a Parent(s) seeking to make a private placement out of state. This form is required and substitutes are not permitted.

Factual Basis:

The adoption of this form is necessary because the ICPC 100A "Interstate Compact On The Placement Of Children Request" form is used by the above named entities as the sending agency's formal written notice to the receiving state of their intention to make an interstate placement and to request that the receiving state provide a finding as to whether the placement would or would not be contrary to the best interest of the child. This form initiates a review by the receiving state which then becomes the official notification that the proposed placement may or may not be made in keeping with the provisions of the Compact that are contained in Article V, Retention of Jurisdiction. The use of this form is required to be used for all placements in which the Compact is applicable. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>. Further, for ease of access this form is also available on the American Public Human Services Association (APHSA) and the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) websites. This form is consistent with the requirements specified in Family Code section 7901.

Section 31-003(i)(2)

Specific Purpose:

This section is adopted to incorporate by reference the ICPC 100B "Interstate Compact Report on Child's Placement Status" form that is used by the CDSS State Deputy Compact Administrator, County ICPC Liaisons, Adoptions District Offices, Public Placing Agencies seeking to make an interstate placement of a child, or a Parent(s) seeking to make a private placement out of state. This form is required and substitutes are not permitted.

Factual Basis:

The adoption of this form is necessary because the ICPC 100B "Interstate Compact Report on Child's Placement Status" form is used by the above named entities to (1) confirm that an approved placement in accordance with the Compact has been made; (2) withdraw a request prior to the home study; (3) indicate that an approved resource will not be used; (4) report a change in the placement resource and/or type of care; (5) report a change of address; and (6) close an ICPC case. This form is an essential tool for both the Compact offices and local agency staff in maintaining current information of the child's movement into, out of, and if pertinent, within the receiving state. It is also a very important mechanism for notifying another state when a placement under the Compact has been terminated and thus providing formal confirmation of case closure. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>. Further, for ease of access this form is also available on the American Public Human Services Association (APHSA) and the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) websites. This form is consistent with the requirements specified in Family Code section 7901.

Section 31-003(j)(1)

Specific Purpose:

This section is adopted to incorporate by reference the ICWA-10(A) "Indian Child Inquiry Attachment" that is used by the petitioner (responsible county welfare department or licensed adoption agency, adoption service provider) in each child custody case to document that the petitioner has inquired about whether the child does or may have Indian ancestry. This form is required and there are no substitutes permitted.

Factual Basis:

The adoption of this form is necessary because it must be completed on all child custody cases as defined by WIC section 224.1(d) to document that inquiry into Indian ancestry was made. The form is used to determine whether further requirements of the Indian Child Welfare Act and implementing California statutes and rules of court may apply to the proceeding. This form is consistent with California Rules of Court, rule 5481(a)(1) which requires this form be used. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS in Child Welfare Services/Case Management System (CWS/CMS) and on the Judicial Council of California website at <http://www.courts.ca.gov/forms.htm?filter=ICW>.

### Section 31-003(j)(2)

#### Specific Purpose:

This section is adopted to incorporate by reference the ICWA-20 "Parental Notification of Indian Status." The petitioner in child custody cases as specified in WIC section 224.1(d) must ask each of the child's parents (if available) about Indian ancestry and tribal connections in order to determine whether further requirements of the ICWA, implementing California statutes and rules of court may apply to the proceeding. This form is required and there are no substitutes permitted.

#### Factual Basis:

This form is required to be used if a parent, guardian or Indian custodian states they are enrolled, eligible for enrollment in a tribe or may have Indian ancestry. California Rules of Court, rule 5.481(a)(2) requires the use of this form. This is consistent with WIC section 224.3 which requires inquiry of Indian ancestry in child custody proceedings. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS in CWS/CMS and on the Judicial Council of California website at <http://www.courts.ca.gov/forms.htm?filter=ICW>.

### Section 31-003(j)(3)

#### Specific Purpose:

This section is adopted to incorporate by reference the ICWA-30 "Notice of Child Custody Proceeding for Indian Child" by petitioners in child custody proceedings as defined in WIC section 224.1(d) when they have reason to know that the child who is subject to the proceeding is or may be an Indian child. This form is required and there are no substitutes permitted.

#### Factual Basis:

This adoption of this form is necessary because it is required in each child custody proceeding when there is reason to know the proceeding involves an Indian child. The completed form must be sent by registered or certified mail, return receipt requested to each tribe of which the child is or may be a member or may be eligible for membership so that the tribe may make a determination of whether or not the child is a member or eligible for membership in the tribe. California Rules of Court, rule 5.481(b) requires the use of this form. This is consistent with WIC section 224.2 which requires notice be sent to all interested parties when there is reason to know the child may be an Indian child. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS in CWS/CMS and on the Judicial Council of California website at <http://www.courts.ca.gov/forms.htm?filter=ICW>.



#### Section 31-003(j)(4)

##### Specific Purpose:

This section is adopted to incorporate by reference the ICWA-30(A) "Attachment to Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act)" which is used by petitioners in child custody proceedings as defined in WIC section 224.1(d) in which there is reason to know that the child is or may be an Indian child. This form is required and there are no substitutes permitted.

##### Factual Basis:

The ICWA-030(A) is used when notice is being sent to a tribe or multiple tribes and there is a need for additional space on the service list. This provides additional space beyond the space provided on the ICWA-030 form. California Rules of Court, rule 5.481(b) requires the use of this form. This is consistent with the requirements specified in WIC section 224.1(d) in which there is reason to know that the child is or may be an Indian child. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS in CWS/CMS and on the Judicial Council of California website at <http://www.courts.ca.gov/forms.htm?filter=ICW>.

#### Section 31-003(k)(1)

##### Specific Purpose:

This section is adopted to incorporate by reference the KG2 form, "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment Program," that is used by county agencies to determine the eligibility of a former foster child for financial assistance from either the State or federally funded Kinship Guardianship Assistance Program (Kin-GAP). This is a required form and there are no substitutes permitted. This form is consistent with the regulations.

##### Factual Basis:

The adoption of this form is necessary because the KG2 form, Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment Program is required to determine if a former foster child is eligible to receive benefits under the state or federal Kin-GAP. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>. This form is required to be completed for the initial determination and again whenever a re-assessment, if performed. The adoption of this section is necessary to comply with the WIC sections 11363 and 11386 that require the department to adopt regulations to carry out the provisions of these chapters and to provide financial assistance to an eligible child and the relative appointed as the legal guardian for the child.

### Section 31-003(s)(1)

#### Specific Purpose:

This section is added to incorporate by reference the SOC 155C form, "Voluntary Placement Agreement Parent/Agency (Indian Child)," that is used to document the voluntary placement of an Indian child in foster care for six months and that such a placement meets the ICWA requirements. This form is required and no substitutes are permitted.

#### Factual Basis:

The adoption of this form is necessary because the SOC 155C "Voluntary Placement Agreement Parent/Agency (Indian Child)" is required when an Indian child is voluntarily placed into foster care. The SOC 155C is used to document that a parent who voluntarily places their Indian child in foster care understands the responsibilities of the county welfare department in securing a foster home that meets the ICWA placement preference requirements as specified in 25 U.S.C. section 1901, et. seq. and WIC section 16507.4(b)(3). By specifying that the provisions of ICWA at 25 U.S.C. section 1901 will be followed in making the placement of the Indian child, this means that the various sections in ICWA including the provisions in 25 U.S.C. section 1913, "Parental rights, voluntary termination" and 25 U.S.C. section 1915 "Placement of Indian children" must be followed. This form also requires the signature of the parent confirming their understanding that the voluntary placement is limited to six months and that the child will be returned to the parent by the date specified on the SOC 155C. This form is not printed in the CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from the CDSS at <http://www.cdss.ca.gov/cdssweb/PG19.htm>.

### Section 31-005.11

#### Specific Purpose/Factual Basis:

This section is amended to correct a grammatical error.

### Section 31-005.111

#### Specific Purpose:

This section is amended to include tribes, tribal social service agencies and Indian organizations as other entities that should be considered when providing pre-placement preventative services for Indian children and their families. This amendment is made to clarify that social workers and county agencies may engage in cooperative working arrangements and thus collaborate with Indian tribes, tribal social service agencies, and Indian organizations as part of their resources for pre-placement services for Indian children and families.

Factual Basis:

This amendment implements the requirement to engage in active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to prevent the breakup of an Indian family and as further specified in WIC section 361.7.

Section 31-040.16

Specific Purpose/Factual Basis:

This is a technical amendment to correct an error in the citation for the definition of a "representative" in this section from Section 31-002(r)(3) to Section 31-002(r)(4).

Section 31-066.21

Specific Purpose:

This section is adopted to clarify that a tribal social worker or a tribal representative is permitted to attend and provide information to a Multidisciplinary Team (MDT) regarding an Indian child being considered for an out-of-state group home placement.

Factual Basis:

The WIC section 18964(b) specifies that a child's tribe or tribe's representative is permitted to attend meetings and provide information about the child that "will be considered" by the team. In all cases, careful evaluation must occur when an out-of-state group home placement is being considered. With Indian children care must be given to ensure compliance with ICWA placement preferences as required by WIC section 361.31, and in ICWA at 25 U.S.C. section 1915. The need for tribal input on the out-of-state placement for Indian children thus takes on a greater significance as the process of identifying appropriate placements that are consistent with ICWA placement preferences can be more complicated.

Section 31-066.211

Specific Purpose:

This section is adopted to require that information provided by a child's tribe to the team is to be given serious consideration in making the decision whether to place an Indian child out-of-state.

Factual Basis:

Out-of-state group home placements are subject to additional scrutiny by a multidisciplinary team as demonstrated by the provisions of Section 31-066. WIC section 18964(b) requires a team considering an out-of-state placement for an Indian child to give tribes an opportunity to give relevant information to be considered in the decision making. This amendment assures that additional ICWA standards applicable to Indian children are given serious consideration because ICWA placement preferences must be complied with, absent good cause to the contrary. In addition, ICWA at 25 U.S.C. section 1915 and WIC section 361.31 require that an Indian child be placed within reasonable proximity to his or her home, taking into account any special needs of the child. This amendment seeks to assure compliance with these ICWA requirements.

Section 31-066.42

Specific Purpose:

This section is amended to correct a grammatical error on the provision for assessment of family history. This section is also amended to require the assessment of a tribe's involvement with the child.

Factual Basis:

The existing regulations for this section are unclear regarding the intent of the required assessment and did not speak to the involvement of the Indian child's tribe. The WIC sections 361.31 and the ICWA at 25 U.S.C. section 1915, require that the standards to be applied in meeting preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. Requiring an assessment of the tribe's involvement with the child will thus assist in meeting this requirement.

Section 31-066.43

Specific Purpose:

This amendment is made to include Tribal Customary Adoption as a permanent placement option for Indian children.

Factual Basis:

SB 1325 (Chapter 287, Statutes of 2009) amended WIC section 366.24 to include Tribal Customary Adoption as a permanent placement option for Indian children. This amendment is thus made to clarify that a Tribal Customary Adoption is an option that the MDT must assess as an option for the Indian child.

### Handbook Section 31-066.43

#### Specific Purpose/Factual Basis:

This is a technical change to delete the numbering (Section 31-066.431) at the beginning of the section and to provide consistency with the formatting throughout Division 31 regulations where handbook sections are not numbered within the outline.

### Section 31-075.2

#### Specific Purpose:

This section is amended to add and implement the requirement at 25 U.S.C. section 1915(e) regarding the provision that an Indian child's records must be provided to the child or the child's tribe and/or to the Secretary of the Interior upon request; and to make explicit that Indian children's case records are to be kept in perpetuity.

#### Factual Basis:

Notwithstanding MPP section 23-353, there are certain situations where records must be kept longer than three years. This section is necessary to implement the requirement in ICWA that a record of each foster or adoptive placement of an Indian child is to be kept indefinitely and that the record must provide evidence of the efforts to comply with the order of placement preferences. Such records are to be made available to the Indian child or the child's tribe, and/or to the Secretary of the Interior upon request. In addition this section implements the requirement enacted by SB 678 that provides that the case records for an Indian child are to be kept in perpetuity per 25 U.S.C. section 1915(e) and WIC section 361.31(k).

### Handbook Section 31-075.21

#### Specific Purpose/Factual Basis:

The existing handbook Section 31-075.21 is deleted because this language is now incorporated into the amended Section 31-075.2 and the adopted Section 31-075.21.

### Section 31-075.21

#### Specific Purpose:

This section is adopted to mandate that all case records pertaining to an Indian child be maintained indefinitely, be made available to the Secretary of the Interior upon request, and must never be removed from the CWS/CMS, or an equivalent case management system.

Factual Basis:

This section is necessary because the ICWA at 25 U.S.C. section 1915(e) and WIC section 361.31(k) require that all documents related to an Indian child's case must be retained by the State and made available at the request of the Secretary of the Interior or the child, or child's tribe. Specifically, Section 361.31(k) states the records must be retained in perpetuity.

Section 31-075.3(a)

Specific Purpose:

This section is amended to inform social workers that when completing a face sheet with identifying information regarding the child and family, they must include Indian ancestry, tribal membership or eligibility for tribal membership.

Factual Basis:

The WIC section 224.3 states there is an affirmative and continuing duty to inquire whether a child is or may be an Indian child. The amendment to this section will help to implement this requirement.

Section 31-075.3(b)

Specific Purpose:

This section is amended to require that social workers document each contact made with an Indian child's tribe when there is reason to know the child may be Indian. Further, this amendment is intended to ensure that social workers including those employed by a Foster Family Agency, probation officers or social workers in another state performing required visits with the child pursuant to the Interstate Compact on the Placement of Children (ICPC) understand and recognize that the child they are working with is an Indian child and thus the ICWA requirements regarding placement preferences, services provided and tribal involvement must be met per ICWA at 25 U.S.C. section 1915.

Factual Basis:

Active efforts are required by ICWA at 25 U.S.C section 1912(d) and in WIC section 361.7(a). Evidence of these efforts is to be presented to a court at specified points in a child's case. Documentation of active efforts must therefore be assured. This section will help promote compliance with this requirement.

### Section 31-075.3(c)

#### Specific Purpose:

This section is adopted to require documentation of the results of the inquiry into whether a child is or may be an Indian child and that it is made in accord with new Sections 31-125.223 pertaining to ICWA inquiry.

#### Factual Basis:

The adoption of this section is necessary to implement specifications regarding the affirmative and ongoing duty to inquire into whether a child is or may be an Indian child by cross referencing the relevant sections where there is direction on carrying out the requirements for fulfilling the duty to inquire. This will implement WIC section 224.3(a) and California Rules of Court, rule 5.481(a).

### Handbook Section 31-075.3(c)

#### Specific Purpose/Factual Basis:

This section is provided for ease of reference and to inform social workers that the California Rules of Court, rule 5.481(a)(3) requires completion of the Indian Child Inquiry Attachment [form ICWA-010(A)] in each case a county welfare department is seeking foster case placement of a child. This section also provides a hyperlink to ICWA forms required by the court and in case management.

### Section 31-075.3(d)

#### Specific Purpose:

This section is adopted to confirm the requirements that must be followed to document the sending of ICWA related notices to parents, guardians, Indian custodians, tribe(s) and the Secretary of the Interior. In addition, the case record must include documentation of all communications such as notes of conversations or meetings with tribal representatives, parent(s), guardian(s) or Indian custodian(s).

#### Factual Basis:

The adoption of this section adds consistency by clarifying the procedures for the noticing and documentation required by ICWA 25 U.S.C. sections 1912(a) and (d); further specified by SB 678 in WIC section 224.2, Family Code section 180 and by California Rules of Court, rule 5.481(b). The ICWA noticing regulations were previously provided for in Section 31-515 and are now to be contained here for consistency and more effective implementation.

#### Handbook Section 31-075.3(d)

##### Specific Purpose/Factual Basis:

This section is provided for ease of reference for social workers to remind them that the California Rules of Court, rule 5.481(b) requires use of the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) to provide notice that a child custody proceeding under ICWA has been initiated. This section also provides a hyperlink to the ICWA forms, which is maintained by the Judicial Council of California.

#### Section 31-075.3(e)

##### Specific Purpose:

This section is adopted to assure that there is documentation of active efforts with specification of whether those efforts proved unsuccessful and why. Compliance will be strengthened by specifying the duty that this documentation must be also included in the case plan and court report.

##### Factual Basis:

The adoption to this section provides clarity that a record of active efforts must be kept in the case record of an Indian child in order to assure compliance with ICWA 25 U.S.C. section 1912(d), and as further specified in WIC section 361.7(b). Compliance with ICWA required active efforts will be strengthened by creating the duty that this documentation must be included in the case plan and court report. This requirement was previously provided for in Section 31-515 and is moved here for consistency and better compliance.

#### Section 31-075.3(f)

##### Specific Purpose:

This section specifies the duty to document, in the case record, active efforts made to comply with ICWA placement preferences. It also adds the duty to specify why an Indian child is not placed in accordance with the tribe's placement preferences.

##### Factual Basis:

The section is adopted to provide clarity for social workers that there must be documentation of active efforts made to place an Indian child in accordance with ICWA placement preferences as specified in WIC section 361.31. Further, SB 678 expanded the duty to engage in active efforts to comply the ICWA placement preferences.



#### Handbook Section 31-075.3(f)

##### Specific Purpose/Factual Basis:

This handbook section is adopted for ease of reference to the SB 678 statutory language on WIC section 361.31 regarding the keeping in perpetuity the documentation of active efforts as applicable to ICWA placement preferences.

#### Sections 31-075.3(g) through (w)(9) Renumbered from Sections 31-075.3(c) through (r)(9)

##### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-075.3(c) through (r)(9) to Sections 31-075(g) to (w)(9) to accommodate the numbering change made by adopting Sections 31-075.3(c) through (f). Further, any Handbooks in these sections have had the outline numbering removed.

#### Section 31-075.3(w)(10)

##### Specific Purpose:

This section is adopted to specify that for a Tribally Approved Home social workers shall obtain written documentation from the tribe approving the home as a placement option. This clarifies what documentation must be secured by the social worker and what is to be placed in the child welfare services case management file.

##### Factual Basis:

A child may be placed in a Tribally Approved Home that has been approved in accord with ICWA as specified in WIC section 361.2(e)(7). This section is necessary in order to provide clarification regarding what documentation the social worker must secure from a tribe regarding the tribe's approval of a home in order to verify the home is a home approved in accord with ICWA.

#### Section 31-075.3(w)(10)(A)

##### Specific Purpose:

This section is adopted to specify that for a Tribally Approved Home, prior to placement, social workers must document that criminal record and child abuse registry background checks have been completed as required by WIC section 361.4.

Factual Basis:

This amendment file clarifies that the social worker retains the duty to assure that the background check requirements stated in WIC section 361.4 have been completed and documented.

Sections 31-075.3(w)(10)(B)1., 1.a. and 2.

Specific Purpose:

These sections are adopted to clarify that a social worker is authorized pursuant to WIC section 10553.12 to place a child in a Tribally Approved Home where a Tribal Child Welfare Agency has conducted the criminal and child abuse background checks for the home. Subsections 1, 1.a. and 2. further specify that placement of a child can be made by the county social worker in a home cleared by the Tribal Child Welfare Agency, without conducting a separate background check, where the tribal agency has certified the individuals have been cleared consistent with HSC sections 1522 and 1522.1 and the tribe agrees to report to the county social worker any subsequent arrests or criminal dispositions involving cleared individuals, of which it has been informed by the California Department of Justice.

Factual Basis:

SB 1460 (Chapter 772, Statutes of 2014) enacted Penal Code (PC) section 11105.08 and amended PC section 11170(b)(8) to authorize a Tribal Child Welfare Agency to receive criminal and child abuse background information for the purpose of clearing individuals for foster or adoptive placement of Indian children. In addition, Section 10553.12 of the WIC was enacted by SB 1460 (Chapter 772, Statutes of 2014) section 15 to specify the requirements for a social worker to be able to place an Indian child in a Tribally Approved Home where the tribal agency, pursuant to the above code sections, has cleared the individuals in a Tribally Approved Home.

Handbook Section 31-075.3(w)(10)(B)2.

Specific Purpose/Factual Basis:

This handbook section is added to clarify that a tribe is not required to have a Title IV-E agreement in order to approve a home for the purpose of foster or adoptive placements. This is included in response to issues raised by counties and reported by ICWA advocates in their attempts to get county recognition of Tribally Approved Homes.

Sections 31-075.3(x) and (y) Renumbered from Sections 31-075.3(t) through (t)(3)(B) and (u)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-075.3(t) through (t)(3)(B) and (u) to Sections 31-075(x) through (x)(3)(B) and (y) to accommodate the numbering change made by adopting Sections 31-075.3(c) through (f) above.

Section 31-075.3(z) Renumbered from Section 31-075.3(v)

Specific Purpose:

This section is amended to ensure active efforts are documented including evaluation and review of concurrent planning and discussions with the Indian child's tribe regarding the potential for Tribal Customary Adoption as an option for the Indian child. Further, it is renumbered from Section 31-075.3(v) to Section 31-075.3(z) to accommodate the numbering change made by adopting Sections 31-075.3(c) through (f) above.

Factual Basis:

This section is amended to include the addition of Tribal Customary Adoption as an option in the permanency planning as stated in WIC sections 361.5(f), 361.5(g)(i) and (ii), 366.26(c) and California Rules of Court, rule 5.690.

Section 31-101.11

Specific Purpose:

This section is adopted to require that when responding to a referral, the social worker shall inquire whether the child is an Indian child, and identify and document each response.

Factual Basis:

This section is adopted to ensure inquiry is made concerning Indian ancestry and or tribal membership consistent with WIC section 224.3(a). This section will also promote compliance with ICWA requirements to engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family per WIC section 361.7(a) and ICWA 25 U.S.C. section 1912(d). Early identification that a child is or may be Indian is critical in order that active efforts be commenced if possible prior to removal of a child. The CDSS has been made aware by tribal stakeholders of the need for early identification of an Indian child and to promote early contact with an Indian child's tribe or tribally based services and thus facilitate better provision of a culturally appropriate response during the initial stages of a referral.

#### Section 31-101.12 Renumbered from Section 31-101.11

##### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-101.11 to Section 31-101.12 due to the adopted language addressed above.

#### Section 31-101.512

##### Specific Purpose:

This section is adopted to ensure the Indian child's tribe, service providers and/or Indian organizations are included early in the preparation and implementation of the case plan in accordance with the required time frames and schedules.

##### Factual Basis:

This section is adopted to provide specific procedures that will include the tribe in case planning and ensure the appropriate services are being offered to an Indian child. This is consistent with WIC section 361.7 active efforts requirements and California Rules of Court, rule 5.690(c) regarding coordination with the Indian child's tribe.

#### Section 31-101.513 Renumbered from Section 31-101.512

##### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-101.512 to Section 31-101.513 due to the adopted language addressed above.

#### Section 31-105.111(d)(5)

##### Specific Purpose:

This section is adopted to require documentation of the tribal affiliation of the adult(s) in the household.

##### Factual Basis:

The adoption of this section clarifies the specific information to be collected regarding each adult in the household to help in the identification of an Indian child that may be subject to ICWA requirements at the earliest point possible and also helps the social worker to identify adults that can provide support to active efforts as stated in ICWA at 25 U.S.C. section 1912(d).

Sections 31-105.111(d)(6) through (d)(8) Renumbered from Sections 31-105.111(d)(5) through (d)(7)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-105.111(d)(5) through (d)(7) to Sections 31-105.111(d)(6) through (d)(8) to provide consistency in the outline numbering due to the adopted language addressed above.

Section 31-105.111(f)(5)

Specific Purpose:

This section is adopted to require documentation of a child's tribal affiliation.

Factual Basis:

The adoption of this section clarifies the specific information to be collected on each minor child in the family to assure identification of an Indian child that may be subject to ICWA requirements at the earliest point possible. This is consistent with WIC section 224.3(a) regarding the duty to inquire if the child is or may be an Indian child.

Sections 31-105.111(f)(6) through (9) Renumbered from Sections 31-105.111(f)(5) through (8)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-105.111(f)(5) through (f)(8) to Sections 31-105.111(f)(6) through (f)(9) due to the adopted language addressed above.

Section 31-105.114(c)

Specific Purpose/Factual Basis:

This is a technical amendment to remove the word "and" that is no longer required at this point and does not change the interpretive meaning of this regulation.

Section 31-105.114(d)

Specific Purpose:

The adoption of this section provides clarity that the child's tribe, tribal organizations and other Indian service providers are appropriate to contact to obtain information about the child, and their relationship to the child. This section is adopted to require documentation regarding contacts with the child's tribe, tribal organizations and other Indian service providers.

Factual Basis:

Counties have expressed concerns over the extent of authority to contact tribes in light of confidentiality requirements in child welfare investigations. This section is amended to clarify that it is appropriate to include tribal representatives and organizations early on in the investigation in an Indian child's case in order to comply with provision of remedial and rehabilitative services designed to prevent the breakup of the Indian family per WIC section 361.7(a) and ICWA at 25 U.S.C. section 1912(d). This section further allows for early identification of potential tribal resources that may assist a family and prevent unnecessary removal of the child.

Section 31-105.114(e) Renumbered from Section 31-105.114(d)

Specific Purpose/Factual Basis:

This section is renumbered from Section 31-105.114(d) to Section 31-105.114(e) due to adopted language addressed above.

Section 31-105.116(b)

Specific Purpose/Factual Basis:

This is a technical amendment to remove the word "or" that is no longer required at this point and does not change the interpretive meaning of this regulation.

Section 31-105.116(b)(1)

Specific Purpose:

This section is adopted to clarify that in a case where a child is known to be or there is a reason to know the child is an Indian child, the child's tribe and tribally specific programs are appropriate resources when referring the family for services and evaluating out the referral.

Factual Basis:

The adoption of this section is necessary to provide clarity that the child's tribe and other tribally based community resources are appropriate community referrals where a referral is evaluated out. This is consistent with active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to help prevent the break-up of an Indian family and to provide culturally appropriate rehabilitative services in accordance with WIC section 361.7(b).

## Handbook Section 31-105.116(b)(1)

### Specific Purpose/Factual Basis:

This handbook section is provided for ease of reference and to inform social workers that "active efforts" require, in particular, efforts to prevent the breakup of the Indian family through the provision of remedial and rehabilitative services. This handbook section informs social workers that they must identify and utilize available culturally relevant community resources, including tribal services and programs that can support the family. Further, this section is necessary to provide social workers with examples of types of services that may be available in the tribal community. This is consistent with active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to help prevent the breakup of an Indian family and to provide culturally appropriate rehabilitative services in accordance with WIC section 361.7(b).

## Section 31-105.117

### Specific Purpose:

This section is amended to clearly indicate requirements and specify that when the decision is made to evaluate out with or without a referral to a community agency, Indian organization or other Indian service provider the rationale for the decision to evaluate out with or without a referral must be documented as specified in Sections 31-105.117(a) and (b).

### Factual Basis:

This section is amended to ensure active efforts in the case of an Indian child and referrals to appropriate service providers are made. More importantly, this requires that the social worker document why a referral to an Indian tribe, Indian organization or other Indian service provider is or is not made. This amendment is consistent with active efforts and the required documentation for the basis of actions taken by social workers as stated in ICWA at 25 U.S.C. section 1912(d) as well as WIC section 361.7(b).

## Section 31-110.2

### Specific Purpose:

This section is amended to clarify that when a social worker determines that an in-person investigation is not necessary, but that the services of another community agency would benefit the child and family, the social worker is authorized to refer to culturally appropriate services.

Factual Basis:

This section is necessary to clarify that at early stages in the case it is appropriate to refer an Indian family to culturally appropriate resources that may be available through the child's tribe, Indian organizations or other Indian service providers. Making such referrals is compliant with the ICWA requirement to engage in active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as stated in ICWA at 25 U.S.C. section 1912(d) as well as WIC section 361.7(b).

Section 31-110.31

Specific Purpose:

This section is adopted to clarify that the social worker has the authority to contact and consult a tribe where an investigation is being conducted of a child that is known to be, or there is reason to be known as, an Indian child. This is consistent with the ICWA requirement for active efforts to prevent the breakup of the Indian family.

Factual Basis:

The adoption of this section is necessary to provide clarity that it is required and consistent with active efforts to consult a tribe in an investigation where the child is known or there is reason to know, the child is an Indian child. This is intended to allow for coordinated efforts between child welfare agencies and tribes, particularly in those areas where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe. Similarly if a child has been previously identified as an Indian in the child welfare system, then early contact with the tribe will further active efforts and provide for culturally appropriate services as required by ICWA at 25 U.S.C. section 1912(d) and WIC section 361.7(b).

Section 31-110.32

Specific Purpose:

This section is adopted to require that workers ask about Indian heritage and tribal membership prior to removal from the home. The adoption of this section is necessary to provide clarity that a social worker must ask about Indian heritage or tribal membership, prior to removal when it is known or there is reason to know that the child is or may be Indian.

Factual Basis:

This is consistent with the inquiry requirements stated in WIC section 224.3(a) as well as consistent with active efforts in ICWA at 25 U.S.C. section 1912(d). This is intended to allow for coordinated efforts between child welfare agencies and tribes, particularly in those areas where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe.



## Handbook Section 31-110.32

### Specific Purpose/Factual Basis:

This handbook is added to inform social workers of the importance to begin the inquiries into the Indian status of the child and must involve the child's family and tribe in beginning the ICWA mandated active efforts to prevent the breakup of the Indian family and the removal of the Indian child from their tribal community. This is the key to the ICWA as specified in 25 U.S.C. section 1912(d).

## Section 31-115.2

### Specific Purpose:

This section is adopted to clarify that prior to the removal of a child from the home a social worker who knows or has reason to know that the referral involves an Indian child must inquire whether the child is an Indian. If it is known or there is reason to know the referral is or may be regarding an Indian child, the social worker is required to contact the Indian child's tribe so as to initiate active efforts to prevent the breakup of the Indian family. Further, this clarifies that the initiation of preplacement preventative efforts is required unless there is imminent danger to the child and an immediate in-person investigation is more urgent.

### Factual Basis:

The adoption of this section is necessary to provide clarity that contacting the tribe is appropriate and consistent with active efforts per WIC section 224.3(c) and as required by ICWA at 25 U.S.C. section 1912(d). However, addressing the imminent danger to the child is paramount and the investigation must not be delayed.

## Handbook Section 31-115.2

This handbook is added to clarify, with examples of different collateral contacts, how social workers may exercise the requirements of WIC section 224.3(c) and ICWA at 25 U.S.C. section 1912(d) when any party is seeking the foster care placement of an Indian child.

## Section 31-120.2

### Specific Purpose:

The adoption of this section provides clarity that contacting a tribe as part of an in person ten day investigation is permitted as consistent with active efforts where it is known, or there is reason to know a child is an Indian child. This is intended to allow for coordinated efforts between child welfare agencies and tribes, particularly in those areas, where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe. Similarly, if a child has been previously identified as an Indian in the child welfare system, then early contact with the tribe will further active efforts.

Factual Basis:

The adoption of this section is necessary to provide clarity that contacting a tribe as part of an in person ten day investigation is permitted as consistent with active efforts per WIC section 224.3(c) and as required by ICWA at 25 U.S.C. section 1912(d).

Section 31-125.222

Specific Purpose:

The amendment of this section is necessary to provide clarity that social workers must make necessary collateral contacts with each person who has knowledge of the condition of each child and that it is appropriate and consistent with active efforts to contact tribes, tribal organizations or other Indian service providers, that may have knowledge of the condition of the Indian child, as some of the collateral contacts made during an investigation.

Factual Basis:

This is necessary to promote active efforts and facilitate coordination between child welfare agencies, tribes and relevant organizations. This amendment is consistent with the requirements in ICWA at 25 U.S.C. section 1912(d) and WIC section 361.7.

Section 31-125.223, .223(a) and (a)(1) through (a)(4)

Specific Purpose:

These sections are adopted to clearly require that social workers, in all cases, must inquire into a child's Indian status as their affirmative and continuing duty. These sections further specify who must be asked and clarifies to social workers what circumstances may give reason to inquire further into Indian status. In addition, instruction is given on the use of Judicial Council's "Indian Child Inquiry Attachment" form, ICWA-010(A).

Factual Basis:

The adoption of this section is necessary to ensure compliance with the affirmative and continuing duty to inquire into Indian status as specified by WIC section 224.3 and the California Rules of Court, rule 5.481(a)(1).

Handbook Section 21-125.223(a)(4)

Specific Purpose/Factual Basis:

This handbook provides the Judicial Council's requirements as stated in California Rules of Court, rule 5.481(a)(1) and to provide a link to the Judicial Council's ICWA forms for ease of reference.

#### Section 31-125.224

##### Specific Purpose/Factual Basis:

This section is adopted to clarify that if a petition for removal per WIC section 313 is filed after an investigation, the notice requirements of Section 31-125.7 will apply if the results of the inquiry indicate the child is or may be an Indian child.

##### Factual Basis:

When a child is or may be associated with a federally recognized tribe, social workers must provide notice to the tribe or tribes with which the child may be associated. Notice requirements are specified in WIC section 313 and in California Rules of Court, rule 5.481(b) and required by ICWA at 25 U.S.C. section 1912(a).

#### Section 31-125.225

##### Specific Purpose:

This section is adopted to clarify that when a child is or may be associated with a non-federally recognized tribe the social worker must inform the tribe that California law permits non-federally recognized tribes to petition the court to be allowed to participate in the proceeding.

##### Factual Basis:

This section is necessary because a non-federally recognized tribe is not covered under ICWA, however, California, through WIC section 306.6, provides the court's discretion for a non-federally recognized tribe to participate in a dependency proceeding.

#### Handbook Section 31-125.225

##### Specific Purpose/Factual Basis:

This Handbook is added for ease of reference to WIC section 306.6(b) regarding non-federally recognized tribes.

#### Section 31-125.511

##### Specific Purpose/Factual Basis:

This section is repealed due to the repeal of Section 31-515, in its entirety, and with the incorporation of ICWA requirements throughout the Division 31 Regulations versus solely in Chapter 31-500 Special Requirements.

## Section 31-125.6

### Specific Purpose:

This section is adopted for clarity that the social worker is required to provide, explain to and ask the child's parent(s), Indian custodian(s), or legal guardian(s), to complete the Judicial Council's "Parental Notification of Indian Status" form, ICWA-020.

### Factual Basis:

The adoption of this section is necessary because once a petition for removal is filed, the court will order completion of the ICWA-020 pursuant to California Rules of Court, rule 5.482(a)(2). If the parent(s), Indian custodian(s) or legal guardian(s) is not at the initial hearing, social workers can be ordered to use reasonable diligence to seek out the parent(s), Indian custodian(s) or legal guardian(s) to get the form completed. Such early active efforts by social workers to secure a completed ICWA-020 will help avoid the necessity to locate the parent(s), Indian custodian(s) or legal guardian(s) later.

## Handbook Section 31-125.6

### Specific Purpose/Factual Basis:

This handbook is added for ease of reference for social workers as it provides a hyperlink to the Judicial Council's website where ICWA forms can be accessed. The handbook also informs the social worker about the court's authority to order the county to use reasonable diligence in locating the parent(s), Indian custodian(s) or legal guardian(s) for purposes of completing the ICWA-020 pursuant to the California Rules of Court, rule 5.481(a)(2).

## Section 31-125.7

### Specific Purpose:

This section is adopted to make specific the social workers' procedural requirements to be followed when conducting ICWA noticing. This section is also adopted to clarify who must be notified when the social worker knows or has reason to know the child is or may be an Indian child.

### Factual Basis:

This section is necessary because the ICWA at 25 U.S.C. section 1912(a) and the WIC section 224.2(a) provide the noticing requirements and specify who should be notified when a dependency petition is filed and there is reason to know the child is or may be an Indian.

### Section 31-125.71

#### Specific Purpose:

This section is adopted to make specific social workers' requirements of communicating the notice of the custody proceeding by registered or certified mail with a return receipt requested, to the tribal chair or the tribe's designated agent registered with the Bureau of Indian Affairs (BIA) in order for the notice to be legally sufficient in meeting active efforts requirements. This section also provides a recommendation that social workers also send an additional notice via first class mail as a way of expanding active efforts and increase the probability of success.

#### Factual Basis:

This section is necessary to comply with ICWA at 25 U.S.C. section 1912(a) and WIC section 224.2 which specify to whom and when notices are to be sent out.

### Section 31-125.72

#### Specific Purpose:

This section is adopted to make specific the individuals that must be noticed and where a worker can find this information.

#### Factual Basis:

This section is necessary because ICWA at 25 U.S.C. section 1912(a) and WIC section 224.2 specify to whom ICWA notices must be sent. This section is also responsive to concerns raised by tribal ICWA workers, and county workers regarding the list.

### Handbook Section 31-125.72

#### Specific Purpose/Factual Basis:

This handbook is added to communicate that ICWA allows Indian tribes to designate an agent other than the tribal chairperson as the point person for ICWA notices. This handbook also informs child welfare staff that the BIA updates the list and advises workers to seek current information. This handbook provides a link to the BIA list of tribal contacts for ICWA noticing purposes.

### Section 31-125.73

#### Specific Purpose:

This section is adopted to inform social workers that the noticing requirements were expanded by SB 678 at WIC section 224.2. This clarifies that copies of notices must be sent directly to the Secretary of the Interior as well as to the Sacramento Area Office of the BIA whether or not the parents, tribe and Indian custodian(s) are known.

#### Factual Basis:

This section is necessary for clarification because California expanded the ICWA notice requirements in WIC section 224.2(a)(4) to include sending a copy directly to the Secretary of the Interior even where the tribe is known. This expansion goes beyond the federal ICWA requirements which only require sending a copy of the ICWA notice to the BIA when the tribe is unknown.

### Handbook Section 31-125.73

#### Specific Purpose/Factual Basis:

This handbook is added to provide reference to California law, WIC section 224.2(a)(4), which expanded the ICWA notice requirements to include sending a copy directly to the Secretary of the Interior even where the tribe is known.

### Section 31-125.731

#### Specific Purpose:

This section is adopted to make clear to a social worker that notices of the proceeding must be sent using the Judicial Council's "Notice of Child Custody Proceeding for Indian Child" form, ICWA-030 and ICWA-030(A) "Attachment to Notice of Child Custody Proceeding for Indian Child," as appropriate.

#### Factual Basis:

This section is necessary to specify, in accordance with WIC section 224.2, 25 U.S.C. section 1912(a) and California Rules of Court, rule 5.481(b)(1), how and to whom notices regarding child custody proceedings shall be sent and includes a link to the ICWA forms.

#### Sections 31-125.732 and .732(a)

##### Specific Purpose:

These sections are adopted to make clear that notices regarding each hearing must continue to be sent to each tribe to which an Indian child may be a member or eligible for membership. It also informs social workers that once a tribe has acknowledged a child is a member or eligible for membership or has intervened in the proceeding, subsequent notices of the proceedings only need to be sent to the child's tribe and further clarifies that once a child's tribe is identified, specified information no longer has to be included with subsequent notices.

##### Factual Basis:

These sections are necessary to clarify when ICWA notices must be sent to tribes and what information must be included in compliance with ICWA noticing requirements per 25 U.S.C. section 1912(a), WIC sections 224.2 and 224.2(a) and California Rules of Court, rule 5.481(b)(1).

#### Section 31-125.74

##### Specific Purpose:

This section is adopted to provide instructions to social workers regarding the sending of notices, the documentation of each response and the maintaining a copy of each notice filed with the court as required by WIC section 224.2.

##### Factual Basis:

This adoption is necessary to inform the social worker as to the provision in state law that contains specific direction regarding their duty to inform the court on their actions to seek and obtain confirmation on the child's Indian status. This section is also necessary so that social workers clearly understand the precise instructions and requirements in the WIC section 224.2 regarding sending notices to the child's tribe, if known, or all potential tribes, if it is not known which specific tribe of which the child may be a member, and for maintaining records regarding each notice that is sent, the tribe's response and that this information must be filed with the court.

### Section 31-125.75

#### Specific Purpose:

This section is adopted to make clear to social workers that they must send notices at least ten days prior to a hearing and to inform social workers that with respect to the detention hearing, notice must be sent as soon as possible after filing the petition and proof of the notice must be filed with the court within 10 days after filing of the petition. This section also clarifies that upon request the court may allow an additional 20 days to the parent, Indian custodian or tribe for preparation for the hearing.

#### Factual Basis:

The adoption of this section is necessary to instruct social workers that per WIC section 224.2(d) they must send notices in a manner so that notices are received by specified parties at least 10 days prior to all hearings, and that as to the detention hearing notice must be sent as soon as possible after filing the petition, with the proof of notice filed within 10 days of filing the petition. It is also necessary that they know that the parents, Indian custodian or tribe have a right to request an additional 20 days to prepare for hearings.

### Handbook Section 31-125.75

#### Specific Purpose/Factual Basis:

This handbook is added to provide social workers for ease of reference, with the specific citation in WIC section 224.2(d) regarding timing for notices and the additional 20 days that must be granted to allow for preparation for hearings.

### Sections 31-125.76 through .765

#### Specific Purpose:

These sections are adopted to make specific and clarify the requirement to advise the court that there has been no confirmation of the Indian child's tribal standing and to inform the court of the efforts made to secure such information. This section provides social workers with instruction regarding proceeding with the dependency action and continuing efforts to confirm the child's tribal status. Additionally, this provides instruction to the social worker as to what may happen after 60 days of not securing a determinative response from the BIA or the child's tribe; and what may happen if subsequent confirmation on the child's Indian status is received.



Factual Basis:

Prior to SB 678, Statutes of 2006, it was unclear at which point in time a child's custody proceeding could continue in the absence of confirmation by a tribe as to a child's status with the tribe. These sections reflect the requirements specified in WIC sections 224.3(e)(3) and (f) per SB 678. Subsection 31-135.765 is a substantial duplication of WIC section 224.3(e)(3) which is necessary to inform social workers that the court can make the determination that ICWA does not apply if a response has not been received within 60 days after the notice was received by the intended recipient. It is necessary that social workers also know that the court is the one responsible for making that determination.

Section 31-135.11

Specific Purpose:

This section is amended to include an "Indian custodian" as a party who has the authority to consent to the voluntary removal of an Indian child for whom they have custody.

Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1913(a) which specifies an Indian custodian may voluntarily consent to a foster care placement of the child.

Sections 31-135.121

Specific Purpose:

This section is amended to include an "Indian custodian" as a party who should be notified of the right to apply for judicial review of a determination to not inform him or her of the child's whereabouts.

Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1903(1). A decision to not inform the parents or Indian custodian of an Indian child's whereabouts arguably converts a voluntary placement under ICWA section 1913 into an ICWA child custody proceeding as defined in Section 1903(1) which triggers the higher substantive requirements of ICWA applicable to involuntary foster care or adoptive actions involving the child. It is necessary to inform the Indian custodian of the rights to request a judicial review.

## Sections 31-135.121(a)

### Specific Purpose:

This section is amended to include the words "Indian custodian" to make clear that the Indian custodian must be included as a party who is to be notified if their right to apply for judicial review of a determination pursuant to WIC section 308. Failure to do so must be documented in the case record. It is also amended to require an evaluation on whether the placement is no longer voluntary which triggers other ICWA requirements.

### Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1903(1). A decision to not inform the parents or Indian custodian of an Indian child's whereabouts could convert a voluntary placement under ICWA section 1913 into an ICWA child custody proceeding as defined in Section 1903(1) which triggers the higher substantive requirements of ICWA applicable to involuntary foster care or adoptive actions involving the child. It is necessary to inform the Indian custodian of the rights to request a judicial review and it is necessary to require that the case be reviewed when an Indian child's whereabouts are withheld.

## Section 31-135.122

### Specific Purpose:

This section is adopted to make clear to social workers that when an Indian child is removed from their parent or Indian custodian, there must be clear and convincing evidence that not removing the child could result in serious emotional or physical damage to the child. Further, this adoption makes clear that such a determination must be supported in court by the testimony of a qualified expert witness.

### Factual Basis:

This section is necessary to comply with the foster care placement and evidence requirements in ICWA at 25 U.S.C. section 1912(e) and WIC section 361(c)(6). This language is a substantial duplication of the statutory language referenced by is necessary in order to assure that social workers know that there must be clear and convincing evidence presented to the court that not removing the child could result in serious and emotional or physical damage.

## Section 31-135.2

### Specific Purpose:

This section is amended to delete the word "any" and replace it with "all" ensuring the clarity that every effort and service provided is documented.

### Factual Basis:

This amendment is necessary to ensure proper field interpretation of the required documentation and to ensure documentation of active efforts as stated in ICWA at 25 U.S.C. sections 1912(d) and 1915(e).

## Section 31-135.23

### Specific Purpose:

This section is adopted to implement and clarify the requirement that social workers must engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family prior to the removal of a child from the family.

### Factual Basis:

The adoption of this section is necessary for clarity and to set uniform standards and procedures when conducting active efforts pursuant to ICWA at 25 U.S.C. section 1912(d), and as specified in WIC section 361.7.

## Sections 31-135.231, .231(a) through (c)

### Specific Purpose:

These sections are adopted to make clear and specific to social workers that active efforts must include identifying the child's Indian heritage in the assessment process, taking into account the prevailing social and cultural standards and the way of life of the Indian child's tribe, and utilizing available resources of the Indian child's family and tribe or other Indian social service organizations, including tribally based family preservation and reunification services when available, and non-Indian resources when tribal resources are not available.

Factual Basis:

The adoption of these sections are necessary to provide clear program requirements to social workers that preplacement preventive efforts must include active efforts consistent with the requirements specified in SB 678, Statutes of 2006, Section 50, regarding the need to recognize the unique way of life of Indian tribes and the valuable resources that exist within the tribe, tribal community, and the child's family, to help prevent the breakup of the Indian family. This regulation is a substantial duplication of WIC section 361.7 but is necessary so that social workers minimally include the factors specified in Section 361.7 as part of their active efforts.

Handbook Section 31-135.231(c)

Specific Purpose/Factual Basis:

This handbook is added to provide social workers with examples of active efforts. Feedback from county representatives has been that they are not certain what actions meet this requirement.

Section 31-135.233

Specific Purpose:

This section is adopted to require that social workers document active efforts in the Indian child's case file. Further, this section specifies that if the determination is made to remove the child, the documentation must include what efforts were made, if they were unsuccessful and the reasons why they were unsuccessful.

Factual Basis:

The adoption of this section is necessary to assure documentation of active efforts because WIC section 361.7 requires that a party seeking the involuntary foster care placement or termination of parental rights over an Indian child, must provide evidence to the court that active efforts were made, and they proved unsuccessful. This section is consistent with the active effort requirements in ICWA at 25 U.S.C. section 1912(d).

Sections 31-135.234, .234(a), (a)(1) through (4), .234(b) through (e) and Handbook Section 31-135.234(e)

Specific Purpose:

These sections are adopted to make clear the social worker's responsibility to notify the child's tribe if the child is a member of an exclusive jurisdiction tribe or if the child is already a ward of their tribe. Additionally, this section specifies the timelines for the court ordered transfer of the child, and specifies what information is to be provided to the tribe in regards to the child's case, and the documentation that must be kept by the county. Finally, a handbook is inserted after Section 31-135.234(e) to inform social workers that Section 305.5 transfer petitions are given expedited priority over other petitions.

Factual Basis:

California has one tribe within its borders that has exclusive jurisdiction and there are tribes in other states that also have such jurisdiction, and hence, have state and federal authority to take immediate custody of their children who come to the attention of child welfare agencies. California tribes also have authority to take their children under their protective custody. Such tribes have the right to request their children be transferred expeditiously to the tribe. California law specifies in WIC sections 381(c) and 305.5(a) that a transfer of the child to such tribes must be made expeditiously and with the release of specified case files. The handbook is included to make clear to the social worker that WIC sections 305.5 and 381(c) require the expeditious transfer of an Indian child to its tribe when the tribe has exclusive jurisdiction, or where their tribe has already taken the child under its protective custody and state child welfare services has also taken the child into protective custody.

Section 31-135.31

Specific Purpose:

This section is adopted to avoid duplicate language and specify a cross reference in the regulations containing standards and procedures for voluntary placements and to highlight that there are specific requirements applicable to voluntary placements of Indian children.

Factual Basis:

This section is necessary to highlight that there are specific requirements as set forth in ICWA at 25 U.S.C section 1913(a) and WIC section 16507.4(b)(3)(A) through (C), related to voluntary placements of Indian children and for ease of reference, to specify the location of the applicable ICWA consent regulations.

#### Handbook Section 31-135.41 Formerly Section 31-135.411

##### Specific Purpose/Factual Basis:

This is a technical change to remove the outline numbering, .411, from the handbook to provide consistency with the formatting of handbooks throughout Division 31 Regulations.

#### Section 31-135.42

##### Specific Purpose:

This section is adopted to be specific and clarify to social workers that there are additional evidentiary requirements applicable when an Indian child is being removed from his or her home. This specifies that the involuntary removal will have to be supported by clear and convincing evidence that will eventually have to be supported in court by a qualified expert witness.

##### Factual Basis:

The adoption of this section is necessary to provide clarity that qualified expert witness testimony is required for removal of an Indian child pursuant to ICWA at 25 U.S.C. section 1912(e); and as further specified in WIC sections 224.6 and 361.7(c).

#### Handbook Section 31-135.42

##### Specific Purpose/Factual Basis:

This handbook is added to refer social workers to WIC section 224.6 regarding a qualified expert witness and which further specifies the requirements to consider the prevailing social and cultural standards of the child's tribe.

#### Section 31-135.43

##### Specific Purpose:

This section is adopted to provide information as to what family and tribal dynamics must be considered when evaluating whether to remove an Indian child.

##### Factual Basis:

This section is necessary to add clarity as to what topics or life circumstances of the Indian family must be considered when evaluating whether to remove an Indian child as stated in the ICWA at 25 U.S.C. sections 1912(e) and 1915(d), and as specified by WIC section 224.6(b)(2).

#### Section 31-135.44

##### Specific Purpose:

This section is adopted to specify to the social worker that the social worker is authorized to obtain assistance from the child's tribe or the BIA in obtaining a qualified expert witness.

##### Factual Basis:

This section is necessary to provide clarity as to what can be done to locate a qualified expert witness as intended by WIC section 224.6(d).

#### Section 31-136.1

##### Specific Purpose

This section is adopted to introduce requirements applicable to the transfer of Indian children from county custody to tribal custody.

##### Factual Basis:

This section is necessary to implement and clarify how the transfer requirements apply under the varying circumstances. Transfer requirements applicable to Indian children vary depending on the circumstances of the transfer and are located in ICWA at 25 U.S.C. section 1911(a) and (b), which specify when transfers to tribal court should be made; also in federal regulations at 45 CFR part 1356.67 as it pertains to transfers to Tribal Title IV-E programs and in state statutes at WIC sections 305.5, 381 and 827.15.

#### Section 31-136.11

##### Specific Purpose

This section is adopted to require social workers to ensure the child is promptly delivered to the designated representative of the tribe or tribal program. This section also requires social workers to comply with local transfer protocols entered into between a tribe and county where such exist and explains how social workers will be held to protocols developed by county/tribe.

##### Factual Basis:

This section is necessary to promote the timely stabilization of the child when transferred to the tribe's physical custody. WIC section 305.5 seeks the quick transfer of children to their tribes. Section 381 requires transfer petitions be given expedited priority. Transfer timelines apply to an Indian child's case depending on the circumstance of the case. This section therefore specifies transfer proceedings should be conducted expeditiously and the physical transfer completed without undue delay.

## Section 31-136.12

### Specific Purpose:

This section is adopted to specify that where the transfer is not to a Tribal Title IV-E Agency, the child's case file is to be provided to the tribe subject to the tribe's agreement to maintain the information confidential. This section also requires the social worker to retain a copy of the file.

### Factual Basis:

This section is necessary to clarify the provisions of Section 14 of SB 1460 Chapter 772, Statutes of 2014, which enacted WIC section 827.15. WIC section 827.15(c) provides that when the transfer is not to a Title IV-E tribe or tribal Title IV-E Agency, then the case file shall be released subject to the tribe's agreement to maintain the documentation confidential. Further in order to stay compliant with WIC section 361.31(k), which requires retention of ICWA case records indefinitely, a copy of the case file must be retained by the county.

When the transfer is to a Title IV-E tribe or tribal agency then the case file is to be transferred consistent with confidentiality requirements under federal regulations at 45 CFR part 205.50 per WIC section 827.15(b); and per WIC section 827.15(c) the case file is to include documentation required by 45 CFR part 1356.67, which sets forth specific requirements applicable to transfers to Title IV-E tribes or Title IV-Tribal agencies. Those requirements are addressed in Section 31-136.2.

## Section 31-136.2

### Specific Purpose:

This section is adopted to require compliance with requirements specified in federal regulations at 45 CFR part 1356.67 on the transfer of children to Tribal Title IV-E Tribes or IV-E tribal agencies and to inform social workers that the transfer must be made in a way that preserves federal Title IV-E eligibility for the child.

### Factual Basis:

This section is necessary to ensure social workers and counties comply with the requirements specified in 45 CFR part 1356.67 that are applicable to Indian children being transferred to a Title IV-E agency or an Indian Tribe with a Title IV-E agreement. It is necessary that social workers know that federal regulations require that transfers be made in a way that preserves a child's Title IV-E eligibility when transferred from state jurisdiction to a Tribal Title IV-E agency. WIC section 827.15(c) incorporates the documentation requirements of the federal regulation.



### Section 31-136.21

#### Specific Purpose:

This section is adopted to make clear and ensure that the federal requirement that a child transferred to a Tribal Title IV-E Agency be transferred in a manner that does not affect the child's eligibility to Title IV-E benefits, medical assistance under title XIX or other federal benefits.

#### Factual Basis:

This section is necessary to ensure compliance with the federal requirements located at 45 CFR part 1356.67(a). This regulation is a substantial duplication of 45 CFR part 1356.67(a) but is necessary in order to provide clear program requirements to the social workers that are responsible for carrying out specific federal requirements pertaining to transfers of Indian children to Title IV-E tribal programs.

### Section 31-136.22

#### Specific Purpose:

This section is adopted to require compliance with the federal requirement that prior to the transfer of the child, the Title IV-E eligibility determination must be completed if it has not already been done and that all documentation related to the eligibility determination must be provided to the tribal agency.

#### Factual Basis:

This section is necessary to comply with the federal requirement located at 45 CFR part 1356.67(b)(1) and (2). When children under county jurisdiction are transferred to another jurisdiction, the Title IV-E eligibility determination is not otherwise required. However, 45 CFR part 1356.67(b)(1) specifically requires the determination be done at the time of transfer when it involves an Indian child being transferred to a tribal Title IV-E agency. 45 CFR part 1356.67(b)(2) also requires documentation necessary to continue IV-E eligibility be provided to the tribal agency. This regulation is a substantial duplication of 45 CFR part 1356.67, but is necessary in order to provide clear program requirements to the social workers that are responsible for carrying out the federal requirements pertaining to transfers of Indian children to Title IV-E tribal programs.

### Section 31-136.23

#### Specific Purpose:

This section is adopted to require that the entire case file be provided to the Tribal Title IV-E Agency when an Indian child is transferred and to require that a copy of the file be retained by the social worker.

Factual Basis:

This section is necessary to implement provisions which together require transfer of a child's entire case file when the child is transferred to a Tribal Title IV-E agency. WIC section 827.15(a) requires transfer of the child's case file, and WIC section 827.15(d) incorporates the minimum documentation requirements of 45 CFR part 1356.67. The federal regulation requires provision to the Tribal agency documentation pertaining to federal eligibility, judicial determinations, eligibility for other benefits, the child's case plan and information about the child's placement settings. The social worker is instructed to retain a copy of the case file because WIC section 361.31(k) requires records of an ICWA child's case are to be kept in perpetuity.

Sections 31-136.24, .241, .242, .242(a) through (c), .243 and .244

Specific Purpose:

These sections are adopted to specify essential documents that must be provided, upon transferring an Indian child to a Tribal Title IV-E Agency in order to assure compliance with 45 CFR part 1356.67(b).

Factual Basis:

These sections are necessary to ensure compliance with 45 CFR part 1356.67(b)(2). This regulation is a substantial duplication of 45 CFR part 1356.67(b), but is necessary in order to provide clear program direction to the social workers that are responsible for carrying out specific federal requirements pertaining to transfers of Indian children to Title IV-E tribal programs.

Handbook Section 31-136.244

Specific Purpose/Factual Basis:

The requirements of 45 CFR part 1356.67 are also applicable to Indian children being transferred to a Tribal Title IV-E Tribe or Agency in another state. This section informs social workers that there are tribes in California and in other states that have Tribal Title IV-E programs. The CDSS will, to the extent available, keep a list of Tribal IV-E Agencies.

### Sections 31-136.3 to .33

#### Specific Purpose:

These sections are adopted to clarify the requirements applicable where an Indian child has been taken into protective custody by a county, but the child is already a ward of a tribal court or is from a tribe with exclusive jurisdiction over child custody proceedings involving its children. Section 31-136.31 cross references Section 31-135.234 which contains specific direction on notification to a tribe for purposes of notice required under WIC section 305.5(a).

#### Factual Basis:

These sections are necessary to provide clarity on what steps are required in order to comply with the transfer requirements in WIC section 305.5(a) as applicable when a child is already under the jurisdiction of a tribal court or is from an exclusive jurisdiction tribe. The notice that is required by WIC section 305.5 (a) is not the same as notice under ICWA and therefore this section directs the social worker to comply with the crossed referenced Section 31-135.234. In addition, the transfer timelines under WIC section 305.5(a) are shortened and require expeditious transfer of the child. This section seeks to provide social workers with specific guidelines on what is required.

### Handbook Section 31-136.33

#### Specific Purpose/Factual Basis:

This handbook is provided for ease of reference to WIC section 305.5(a) regarding the transfer requirements for an Indian child that is already under protective wardship of its tribe or is from an Indian tribe that has exclusive jurisdiction over child custody proceedings pursuant to ICWA at 25 U.S.C. section 1911(a).

### Section 31-201.111(a)

#### Specific Purpose:

This section is adopted to clearly specify requirements in the assessment and determination of the case plan for an Indian child. Active efforts as required by ICWA must include the gathering of information from the tribe, child's family and Indian service providers and to ultimately consider tribal placement preferences and permanency options if removal becomes necessary. To avoid duplication of language, it cross references Sections 31-135.23 and 31-420.2, which provide more specification on active efforts.

Factual Basis:

The adoption of this section is necessary to create consistency and include the requirement to engage in ICWA related active efforts and to comply with placement preferences as required by ICWA at 25 U.S.C. sections 1912 and 1915, and specified in WIC sections 361.31 and 361.7.

Section 31-201.121(a)

Specific Purpose:

This section is amended to clearly specify the requirement that in the provision of family maintenance services, active efforts are required by ICWA at 25 U.S.C. section 1912(d) and as further specified by WIC section 361.7(b). To avoid duplicative language, it cross references Section 31-135.23, which provides more specificity regarding active efforts.

Factual Basis:

The amendment of this section is necessary so that the family maintenance track complies with the active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family required by ICWA 25 U.S.C. section 1912(d) and as further specified by WIC section 361.7(b).

Section 31-201.121(b)

Specific Purpose:

This section is amended to clearly specify that in the provision of family reunification services, active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family are required by ICWA 25 U.S.C. section 1912(d) as specified by WIC section 361.7(b). To avoid duplication it cross references Section 31-135.23, which provides more specification on active efforts.

Factual Basis:

The amendment of this section is necessary so that the reunification track must also comply with the active efforts required by ICWA 25 U.S.C. section 1912(d) and as further specified in WIC section 361.7(b).

Section 31-201.121(c)(3)

Specific Purpose/Factual Basis:

This is a technical change to correct a grammatical error where "a permanent placement services" is incorrect.

Sections 31-201.121(c)(3)(A)2., 2.a. and 2.a.(i) through (v)

Specific Purpose:

These sections are adopted to clearly specify the ICWA adoption placement preferences where an Indian child's case plan goal may entail the potential adoption of an Indian child. These sections specify standards that must be complied with pertaining to adoptive placement preferences and that when a preferred placement is unavailable the social worker must find a family that is willing to promote continued contact with the child's tribe and their cultural and ceremonial events.

Factual Basis:

The adoption of this section is necessary for the permanent placement of an Indian child which requires additional standards when the placement involves adoption of the child that must be evaluated consistent with the requirements set forth in the ICWA 25 at U.S.C. sections 1912(f) and 1915, and WIC sections 224.6 and 361.31.

Section 31-201.121(c)(3)(A)3

Specific Purpose:

This section is adopted to clarify that when permanent placement may lead to the TPR of the Indian child's parent(s), the social worker must be aware that no termination can be ordered by the court without the support of evidence beyond a reasonable doubt, including the testimony of a qualified expert witness, that continued custody by the parent is likely to result in serious emotional or physical damage to the child and that active efforts to prevent the breakup of the Indian family have been provided and that they failed.

Factual Basis:

This section is essential to the social worker's understanding of ICWA requirements per 25 U.S.C. section 1902 and WIC sections 361.7 and 366.26.

Section 31-201.121(c)(3)(A)4

Specific Purpose:

This section is adopted to clarify require that before a social worker recommends termination of parental rights, the review must evaluate whether TPR would substantially interfere with the child's connection to their tribal community or tribal membership. For example, if a parent's rights are terminated and a child is adopted into a non-Indian family, the child may lose its membership in the birth parent's tribe and any benefits (such as allocations from the BIA or Indian gaming) to which they would otherwise have had a right.

Factual Basis:

This section is essential to the understanding of social workers with regards to the ICWA provisions regarding termination of parental rights at 25 U.S.C. section 1902 and WIC section 366.26(c)(1)(B)(vi)(I).

Further, this is essential to the protection of the tribal rights of the child.

Section 31-201.121(c)(3)(A)5

Specific Purpose:

This section is adopted to clarify that a social worker shall consider if there is another planned permanent living arrangement that does not require TPR but can still provide the child with permanency.

Factual Basis:

This section is adopted to promote the social workers' understanding that there may be other permanency options that are appropriate for an Indian child that must be explored and considered. A planned permanent living arrangement is authorized by WIC sections 358.1(j), 366.21(i)(a) and 16501.1.F(15), is consistent with the intent of the ICWA at 25 U.S.C. sections 1902 and 1915(d), and is the precursor to consideration of Tribal Customary Adoption.

Sections 31-201.121(c)(3)(A)6

Specific Purpose:

This section is adopted to require a social worker, after conferring with the child's tribe, to evaluate whether a Tribal Customary Adoption is a viable option for the child pursuant to WIC section 366.24.

Factual Basis:

This section is essential to the understanding of social workers that WIC section 366.26(c)(1)(B)(vi) allows Tribal Customary Adoption and therefore is a permanency option for Indian children.

Sections 31-201.121(c)(3)(A)(7)

Specific Purpose:

This section is adopted to require a social worker to collaborate with a Tribe when a tribe elects to consider a Tribal Customary Adoption as a viable option for the child pursuant to WIC section 366.24.

Factual Basis:

The adoption of this section is essential to the understanding of social workers that WIC section 366.26(c)(1)(B)(vi) allows Tribal Customary Adoption and that they must therefore collaborate with the tribe in meeting the requirements set forth in WIC section 366.24 which contains specific procedural requirements that need county and tribe collaboration in order to effectively complete the Tribal Customary Adoption.

Handbook Section 31-201.121(c)(3)(A)7

Specific Purpose/Factual Basis:

This Handbook is added to inform social workers that the tribe is the only entity that can elect Tribal Customary Adoption as the permanency plan for an Indian child as set forth in WIC section 366.26(e)(2). Further, this handbook section clarifies that the tribe may choose a different permanency option per WIC section 366.26(c)(1)(B)(vi)(II); and that a tribe is not required to elect Tribal Customary Adoption.

Section 31-201(c)(3)(A)8 Renumbered from Section 31-201(c)(3)(A)2

Specific Purpose/Factual Basis:

This section is renumbered from Section 31-201(c)(3)(A)2 to Section 31-201(c)(3)(A)8 due to the adoption of new Sections 31-201(c)(3)(A)2 through 7.

Handbook Section 31-201.121(c)(3)(B)

Specific Purpose/Factual Basis:

This Handbook change is a deletion of the outline numbers to make the handbook section consistent with the non-numbered handbook sections.

Section 31-201.133(a)

Specific Purpose:

This section is amended to instruct social workers to include the child's tribe, tribal advocate, and Indian custodian if the child has one, in the assessment and case planning process.

Factual Basis:

The amendment of this section is necessary to add clarity as to the appropriateness to include the tribe, the involvement of the Indian custodian and the tribal advocate to take part in the assessment and case planning process. Under ICWA a tribe and Indian custodian have the right to intervene in a child custody proceeding. As parties they have the right to access documents related to the proceeding, express placement preferences, and voice their perspective on what is in the best interest of the child. This section assures that they are an integral part of the assessment and case planning process per ICWA at 25 U.S.C. sections 1911, 1912(c) and 1915, WIC sections 361.31 and 361.7(b) and California Rules of Court, rule 5.690(c).

Sections 31-205.11 and .111 Renumbered from Sections 31-205.1(a) and .1(a)(1)

Specific Purpose/Factual Basis

These sections are renumbered from Sections 31-205.1(a) and 31-205.1(a)(1) to Sections 31-205.11 and 31-205.111 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-205.111(a)

Specific Purpose:

This section is adopted to make clear that the Indian social, cultural and traditional practices including family organization and child-rearing practices of the child's tribe must be included in the assessment documentation.

Factual Basis:

The adoption of this section is necessary as it clarifies that the prevailing social and cultural standards and way of life of the Indian child's tribe are to be included in the child's assessment documentation. The ICWA at 25 U.S.C. section 1915, as codified in WIC section 361.31(f), specifies that in meeting ICWA placement preferences, the prevailing social and cultural standards of the Indian community are to be applied. The adoption supports compliance with this requirement.

Section 31-205.112 Renumbered from Section 31-205.1(a)(2)

Specific Purpose:

This section is amended to include "Indian custodian(s)" as a person to be included in the assessment of social and cultural factors. This section is renumbered from Section 31-205.1(a)(2) to Section 31-205.112 to reformat the outline numbering for consistency.



Factual Basis:

This amendment is necessary to ensure and clarify that social workers are authorized to include Indian custodians when considering the relevant social, cultural, and physical factors to be assessed in the case of an Indian child.

Sections 31-205.113, .12 and .13 Renumbered from Sections 31-205.1(a)(3), .1(b) and .1(c)

Specific Purpose/Factual Basis

These sections are renumbered from Sections 31-205.1(a)(3), 31-205.1(b) and 31-205.1(c) to Sections 31-205.113, 31-205.12 and 31-205.13 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-205.131

Specific Purpose:

The adoption of this section clarifies the requirements that the assessment documentation must include information on active efforts as required by ICWA and as implemented in state law. This addition complies with the higher standards applicable to the removal of Indian children and that the information on the active efforts taken are documented.

Factual Basis:

The adoption of this section is necessary to provide consistency throughout the documentation in the case file that active efforts and the testimony of a qualified expert witness was utilized as required by ICWA at 25 U.S.C. sections 1912(d) through (e), 1915 and WIC sections 224.6 and 361.7.

Sections 31-205.14, .15 and .16 Renumbered from Sections 31-205.1(d), .1(e) and .1(f)

Specific Purpose/Factual Basis

These sections are renumbered from Sections 31-205.1(d), 31-205.1(e) and 31-205.1(f) to Sections 31-205.14, 31-205.15 and 31-205.16 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-205.161

Specific Purpose:

This section is adopted to clarify the requirement of documentation of the active efforts to provide pre-placement preventative services to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and the results of those efforts.

Factual Basis:

The adoption of this section is necessary to document the active efforts that were required, offered and delivered to the child and their family and the results of those efforts as required by ICWA at 25 U.S.C. section 1912(d) and WIC section 361.7.

Section 31-205.17 Renumbered from Section 31-205.1(g)

Specific Purpose/Factual Basis:

This section is renumbered from Section 31-205.1(g) to Section 31-205.17 to reformat the outline numbering for consistency. There is no change in regulation text.

Section 31-205.171

Specific Purpose:

This section is adopted to clarify the requirement that when family reunification services are recommended social workers must document the active efforts to include the Indian child's relatives, extended family members, the tribe and tribal agencies in planning for permanency in case family reunification fails.

Factual Basis:

This section is necessary to provide that relatives, extended family, the tribe and tribal agencies are considered as individuals who could assist in permanency planning or provide legal permanency should family reunification fail, as per ICWA 25 U.S.C. section 1912(d). Further, this section again reminds social workers about Tribal Customary Adoption as a permanency option as stated in WIC section 366.24 that must be considered in the assessment and documented.

Sections 31-205.18, .19 and .20 Renumbered from Sections 31-205.1(h), .1(i) and .1(j)

Specific Purpose/Factual Basis

These sections are renumbered from Sections 31-205.1(h), 31-205.1(i) and 31-205.1(j) to Sections 31-205.18, 31-205.19 and 31-205.20 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-206.221(a)

Specific Purpose:

This section is adopted to clarify that in the case of an Indian child, the social worker must document and describe the services available and being provided to the child by the tribe, Indian caregiver and Indian service providers.

Factual Basis:

The adoption of this section is necessary to require that the specific services provided by the Indian child's tribe and tribal social service providers be documented. This section is consistent with ICWA at 25 U.S.C. section 1915(e) and WIC section 361.7.

Section 31-206.222(a)

Specific Purpose:

This section is amended to clarify that the social worker must document that the Indian child's parents, guardians or Indian custodians are provided reunification services as part of the active efforts to prevent the breakup of the Indian family per ICWA at 25 U.S.C. section 1912(d).

Factual Basis:

The amendment of this section is necessary to expand, and clarify that, the term "parents" should include guardians and "Indian custodian" and to clarify the active efforts requirements in ICWA 25 U.S.C. Section 1912(d) and WIC section 361.7.

Section 31.206.222(b)(1)

Specific Purpose:

This section is adopted to specify the requirement that the testimony of a qualified expert witness is required before a permanent placement order.

Factual Basis:

The adoption of this section is necessary to provide clarity as to the requirement that a higher level of evidence brought by a qualified expert witness in the ICWA at 25 U.S.C. section 1912(e) and (f) and WIC sections 224.6(b)(1) and 361.7(c).

Section 31-206.311

Specific Purpose:

This section is adopted to make specific the requirement for documentation of active efforts to place an Indian child per ICWA placement standards; and justification for not meeting the ICWA placement standards as required by WIC section 361.31(j).

Factual Basis:

The adoption of this section is necessary to provide clarity as to the required documentation of the social worker's actions to follow the active efforts requirements as to placement preferences in ICWA at 25 U.S.C. section 1915(b) and WIC section 361.31. If the social worker was not able to make a placement according to the specified placement preference, they must provide reasons why this did not occur as stated in WIC section 361.31(j).

Sections 31-206.312, .312(a) and .312(b)

Specific Purpose:

These sections are adopted to clarify that ICWA placement preferences are well defined, that a social worker must be informed of the specifics of those preferences and to provide a link to those details which social workers can access online. Further, this section calls the attention of social workers to the "good cause" standard in ICWA that requires that deviation from the tribal placement preferences must be well documented.

Factual Basis:

These sections are necessary to comply with ICWA at 25 U.S.C. section 1912(e) which specifies the placement preferences for Indian children which are provided herein to emphasize their importance to the welfare of Indian children and Indian tribes. The importance that social workers follow these placement preferences and document those efforts as confirmed in WIC section 361.31(e).

Sections 31-206.313 through .318 Renumbered from Sections 31-206.311 through .316

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-206.311 through 31-206.316 to Sections 31-206.313 through 31-206.318 to make consistent with the additions of adopted language. This change is necessary to make these sections consistent with the existing numbering pattern. There are no changes to the regulation text.

Section 31-310.131

Specific Purpose:

This section is adopted to require that in the provision of services aimed at maintaining an Indian child with his or her family, the social worker is to comply with the requirement to engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family as further specified in Section 31-135.23, and clarify that such efforts include working with the child's family, tribe, tribal and other Indian social service agencies and organizations.

Factual Basis:

The adoption of this section is necessary to clarify that ICWA at 25 U.S.C. section 1912 and WIC section 361.7 require additional efforts to prevent the breakup of the family when an Indian child is involved. This section is consistent with the requirements of ICWA at 25 U.S.C. sections 1912 and 1915 and WIC sections 361.31 and 361.7(b).

Section 31-315.11

Specific Purpose:

This section is adopted to ensure that as part of service funded activities, social workers comply with their responsibility to refer Indian children and families to culturally appropriate services consistent with the requirements of ICWA to provide remedial, rehabilitative and preventative services to prevent the breakup of the Indian family. Further, this section speaks about potential tribal resources that must be considered and made available to Indian children and families. This section also reminds social workers of the ICWA requirements for documentation of active efforts and why those efforts were unsuccessful.

Factual Basis:

The adoption of this section is necessary to ensure that social workers as part of service funded activities comply with the ICWA requirement at 25 U.S.C. sections 1912(d) that remedial services and rehabilitative program and preventive measures to prevent the breakup of the Indian family must be made available to Indian children and families.

Section 31-335.1

Specific Purpose:

This section is amended to include the "Indian custodian" as someone with whom other professionals may be working and with whom the social worker must maintain contact.

Factual Basis:

This amendment is necessary to include Indian custodian(s) pursuant to ICWA at 25 U.S.C. section 1912(a). Further, this amendment adds "the" before "out-of-home care provider" as a grammatical change only.

Section 31-335.16

Specific Purpose/Factual Basis:

This section is amended to eliminate the period because Section 31-335.17 is adopted into the list.

### Section 31-335.17

#### Specific Purpose:

This section is adopted to require the social worker to establish and maintain contact with the Indian child's tribe and other Indian social service providers.

#### Factual Basis:

The adoption of this section is necessary to provide that on-going contact is needed with those providing services as part of the child's case plan. In the case of an Indian child, the social worker must maintain contact with the tribe, tribal, Indian social service agencies and other agencies as required in WIC sections 361.31 and 361.7.

### Handbook Section 31-335.17 Renumbered from Section 31-335.2 through .24

#### Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Sections 31-335.2 through 31-335.24, which will now be referenced as Handbook Section 31-335.17 because it comes immediately after. In addition, the handbook is updated to add an objective regarding ICWA active efforts to the handbook for guidance of the social worker. This handbook does not change the meaning of the regulations, but is intended for guidance in the field. The numbering sequence 1 through 5 is only for the list of objectives and is not part of an outline.

### Section 31-335.2 Renumbered from Section 31-335.3

#### Specific Purpose:

This section is amended to renumber from Section 31-335.3 to Section 31-335.2 due to deleting a handbook from the regulation outline numbering. The amendment also clarifies that the social worker, must also request as applicable, written reports regarding services being provided by professionals to a child's Indian custodian. Finally, the word "the" is being added to the sentence for grammatical purposes.

#### Factual Basis:

The addition of Indian custodian to this section is necessary because it recognizes the Indian custodian as a covered person for the services under this section and makes this section consistent with the provisions of ICWA at 25 U.S.C. sections 1912 and 1913.

## Handbook Section 31-335.2

### Specific Purpose/Factual Basis:

This handbook section is added to provide social workers with some examples of the different types of groups that may be working with an Indian child and family.

## Sections 31-335.21 and .211 Renumbered from Sections 31-335.31 and .311

### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-335.31 and 31-335.311 to Sections 31-335.21 and 31-335.211 due to deleting outline numbering from Handbook Section 31-335.17 above. There is no regulatory change to these sections.

## Sections 31-405.11 and .12 Renumbered from Sections 31-405.1(a) and (b)

### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(a) and (b) to Sections 31-405.11 and .12 to reformat the outline numbering for consistency. There is no change to the regulation text.

## Section 31-405.121

### Specific Purpose:

This section is adopted to make clear that the relative placement preferences for an Indian child are different and include a longer list of extended family members. This section also informs the social worker that if the first preference per ICWA is not an option for the child, then the placement preferences specified in Section 31-420.3 are to be followed.

### Factual Basis:

This section is necessary to clarify that ICWA's first preference for placement of Indian children is with a member of the child's extended family and that ICWA has a specific definition for extended family as per 25 U.S.C. section 1915.

## Sections 31-405.122 and .123 Renumbered from Sections 31-405.1(b)(1) and (b)(2)

### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(b)(1) and (b)(2) to Sections 31-405.122 and .123 to reformat the outline numbering for consistency. There is no change to the regulation text.

### Handbook Section 31-405.123

#### Specific Purpose/Factual Basis:

This handbook section is added for ease of reference to the language in ICWA at 25 U.S.C. section 1915 for the definition of extended family members.

### Section 31-405.13 Renumbered from Section 31-405.1(c)

#### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-405.1(c) to Section 31-405.13 to reformat the outline numbering for consistency. There is no change to the regulation text.

### Sections 31-405.131 through .131(c)(3)

#### Specific Purpose:

These sections are adopted to specify that active efforts must be engaged in to comply with the ICWA placement preferences pursuant to WIC section 361.31(k). It further specifies standards that must be applied when engaging in active efforts related to placement preferences.

#### Factual Basis

This section is necessary to provide clarity that active efforts must also be engaged for placement preferences as stated in ICWA at 25 U.S.C. section 1915(d) and WIC section 361.31(k), to consider the social and cultural ties with the child's tribe.

### Sections 31-405.132 and .133 Renumbered from Sections 31-405.1(c)(1) and (c)(2)

#### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(c)(1) and (c)(2) to Sections 31-405.132 and .133 to reformat the outline numbering for consistency. There is no change to the regulation text.

### Sections 31-405.14, .141 and .15 Renumbered from Sections 31-405.1(d), (d)(1) and (e)

#### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(d), (d)(1) and (e) to Sections 31-405.14, .141 and .15 to reformat the outline numbering for consistency. There is no change to the regulation text.



## Sections 31-405.16 through .165

### Specific Purpose:

These sections are adopted to specify a process, clarify duties and specify safety standards when making the determination to place a child in a Tribally Approved Home. These sections intend to provide a process that clarifies the role of the social worker including the duty to conduct criminal background checks and Child Abuse Central Index (CACI) checks. It also clarifies the social worker's duty in those instances where a Tribal Child Welfare Agency pursuant to, and as defined in, WIC section 10553.12, conducts its own background checks. While the licensing requirements are excluded, certain protocols are retained that will provide additional support to prospective foster parents such as the provision to the caregivers of an orientation on the child welfare system as provided by Section 31-445.141 or the rights of children in out-of home care contained in Section 31-445.142. Finally, this section clarifies that absent good cause to the contrary, the placement should follow the list of ICWA placement preferences at 25 U.S.C. section 1915(b)(i – iv), such as a Tribally Approved Home, which is second on the list.

### Factual Basis:

The adoption of this section is necessary because confusion has been expressed by county social workers as well as tribal representatives, during ICWA Workgroup meetings and at Tribally Approved Homes Sub-Committee Meetings, over the appropriate county role in the approval of the home for the placement of an Indian child. This section clarifies that Tribally Approved Homes are authorized by ICWA, in which they are identified as the equivalent of state licensed or approved foster care homes and are contained within the federal definition of a foster care home eligible for Title IV-E. Tribally Approved Homes are not subject to state licensing requirements for foster care because they are licensed or approved according to the tribe's standards. They are an option for placement of Indian children, consistent with the ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; HSC section 1505; and WIC section 361.2(e)(7).

## Sections 31-405.17, .171, .171(a) through .171(f) Renumbered from Sections 31-405.1(f), (f)(1), (f)(1)(A) through (f)(1)(F)

### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(f), (f)(1), (f)(1)(A) through (f)(1)(F) to Sections 31-405.17, .171, .171(a) through .171(f) to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.18, .181, .181(a) and .181(b) Renumbered from Sections 31-405.1(g), (g)(1), (g)(1)(A) and (g)(1)(B)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(g), (g)(1), (g)(1)(A) and (g)(1)(B) to Sections 31-405.18, .181, .181(a) and .181(b) to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-405.1(h)

Specific Purpose/Factual Basis:

This section is repealed due to the repealing of the Special Requirements Section 31-515 in its entirety and integrating those special requirements as normal requirements throughout the Division 31 regulations.

Sections 31-405.19 through .23 Renumbered from Sections 31-405.1(i) through (m)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(i) through (m) to Sections 31-405.19 through .23 to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.24 and .241 Renumbered from Sections 31-405.1(n) and (n)(1)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(n) and (n)(1) to Sections 31-405.24 and .241 to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.25 through .28 Renumbered from Sections 31-405.1(o) through (r)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(o) through (r) to Sections 31-405.25 through .28 to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.29, .291 through .295 Renumbered from Sections 31-405.1(s), (s)(1) through (s)(5)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(s), (s)(1) through (s)(5) to Sections 31-405.29, .291 through .295 to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.30, .301, .31 through .33 and .331 Renumbered from Sections 31-405.1(t), (t)(1), (u) through (w) and (w)(1)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-405.1(t), (t)(1), (u) through (w) and (w)(1) to Sections 31-405.30, .301, .31 through .33 and .331 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-405.331(a)

Specific Purpose:

This section is adopted to clarify the requirement for documentation on the reasons for the transfer of an Indian child to a different placement and to also require documentation of the social worker's contact and coordination with the child's tribe so that an ICWA placement preference can be identified.

Factual Basis:

This section is necessary to assure the continuation of active efforts to comply with the ICWA placement preferences specified in 25 U.S.C. section 1915(b), by requiring contact with the child's tribe when a child's placement is being changed. Social workers and tribal representatives have shared that conflicts have arisen when a child is moved and there is a failure to inform the child's tribe.

Section 31-405.332 Renumbered from Section 31-405.1(w)(2)

Specific Purpose/Factual Basis:

This section is renumbered from Section 31-405.1(w)(2) to Section 31-405.332 to reformat the outline numbering for consistency. There is no change to the regulation text.

Sections 31-405.34, .341 and .342 Renumbered from Sections 31-405.1(x), (x)(1) and (x)(2)

Specific Purpose:

These sections are renumbered from Sections 31-405.1(x), (x)(1) and (x)(2) to Sections 31-405.34, .341 and .342 to reformat the outline numbering for consistency. Further, Section 31-405.342 is amended to clarify that proper discharge plan documentation must include Indian custodian, relative or extended family member as the persons to whom a child may return when discharged from out of home care. This amendment deletes the word "kin" as vague and because the additional language creates an inclusive list.

Factual Basis:

The amendment of this section is necessary in the case of an Indian child, thus added Indian custodian, relative or extended family member as referred to in ICWA at 25 U.S.C. section 1915 and WIC section 361.31. Since this amendment includes the specific terminology that describes "kin" it is not necessary to use this term here.

Handbook Section 31-406.12(b) Renumbered from Section 31-406.12(c)

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-406.12 and will now be referenced as Handbook Section 31-406.12(b) because it comes immediately after. There are no text changes for the entire Section 31-406.

Section 31-410.3

Specific Purpose:

This section is adopted to specify that the social worker collaborate with the child's tribe for purposes of preventing removal of an Indian child from his Indian family and to ask assistance in locating a temporary placement and or other services that may be available to the child. This is "permissive" in the sense that temporary placements usually occur during emergency situations and a social worker may not have time to initiate contact with the tribe. This section is also adopted to specify the requirement of the adherence to the placement preferences for the temporary placement of Indian children.

Factual Basis:

The adoption of this section is necessary in support of early initiation of active efforts, consistent with ICWA at 25 U.S.C. sections 1912(d) and 1915(b) and WIC sections 361.31 and 361.7.

### Section 31-410.31

#### Specific Purpose:

This section is adopted to clarify that when selecting a temporary placement for an Indian child, social workers are required, to the extent possible, to follow the ICWA active efforts and placement preference requirements.

#### Factual Basis:

The adoption of this section is necessary to make clear that when selecting a temporary placement for an Indian child, social workers are required, to the extent possible, to follow the ICWA active efforts and placement preference requirements specified in 25 U.S.C. section 1915. This section cross references the placement preference requirements in Section 31-420.3. Additionally, this section is necessary because prior Division 31 regulations did not address this issue regarding the important relationship between active efforts to prevent the removal of an Indian child from their family even when seeking a temporary placement.

### Section 31-410.4 Renumbered from Section 31-410.3

#### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-410.3 to Section 31-410.4 due to the adoption of Section 31-410.3 above. There is no change to the regulation text.

### Sections 31-410.5 through .532 Renumbered from Sections 31-410.4 through .432

#### Specific Purpose/Factual Basis:

Theses sections are renumbered from Sections 31-410.4 through 31-410.432 to Sections 31-410.5 through .532 due to the adoption of Section 31-410.3 above. There is no change to the regulation text.

## Sections 31-410.6, .61 and .611 Renumbered from Sections 31-410.5, .51 and .511

### Specific Purpose:

These sections are renumbered from Sections 31-410.5, 31-410.51 and 31-410.511 to Sections 31-410.6, 31-410.61 and 31-410.611 due to the adoption of Section 31-410.3 above. Specifically, Section 31-410.611 is amended to add the exception for an Indian child whose tribe selects a Tribally Approved Home for the placement of its Indian child per ICWA at 25 U.S.C. section 1915(b). Section 31-410.611 is intended to clarify that the social worker must conduct criminal background checks and CACI checks that apply to the placement of a child that is under juvenile court jurisdiction unless the tribe has a Tribal Child Welfare Agency approved by the Department of Justice to conduct criminal background and CACI checks. This provision is consistent with the changes implemented via SB 1460 (Chapter 772, Statutes of 2014). While the licensing of the Tribally Approved Home is not required, this section clarifies that nonetheless certain protocols are retained that will provide additional support to prospective foster parents such as the provision to the caregiver of an orientation on the child welfare system provided by Section 31-445.141 or the rights of children in out-of home care contained in Section 31-445.142. Finally, this section clarifies that absent good cause to the contrary, the placement should follow the list of ICWA placement preferences at 25 U.S.C. section 1915(b) and Section 31-420.3, such as a Tribally Approved Home, which is second on the list.

### Factual Basis:

This amendment to Section 31-410.611 is necessary to demonstrate Tribally Approved Homes are authorized by ICWA, in which they are identified as the equivalent of state licensed foster care homes and are contained within the federal definition of a foster care home eligible for Title IV-E funding. Such homes are not subject to licensing requirements for foster care, yet are an option for placement of Indian children, consistent with the ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; and HSC section 1505. Confusion has been expressed by county social workers as well as tribal representatives, over county duties when an Indian child is being placed in a Tribally Approved Home.

## Section 31-410.612

### Specific Purpose:

This section is adopted to clarify that a Tribally Approved Home and the tribal assessment is considered equivalent to state licensing standards, applicable to foster family homes consistent with Section 31-405.1(f) and therefore eligible for Title IV-E funding.

### Factual Basis:

This adoption is necessary to be consistent with ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; and HSC section 1505, stating tribes are authorized to license and approve their own foster or adoptive homes.

Handbook Section 31-410.612 Renumbered from Section 31-410.511(a)

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-410.511(a), which will now be referenced as Handbook Section 31-410.612 because it comes immediately after. There are no changes to the handbook text.

Sections 31-410.613 and .614 Renumbered from Sections 31-410.512 and .513

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-410.512 and .513 to Sections 31-410.613 and .614 due to the adoption of Section 31-410.612 above. There is no change to the regulation text.

Handbook Section 31-410.614 Renumbered from Section 31-410.513(a)

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-410.513(a), which will now be referenced as Handbook Section 31-410.614 because it comes immediately after. There are no changes to the handbook text.

Section 31-410.615 Renumbered from Section 31-410.514

Specific Purpose/Factual Basis:

This section is renumbered from Section 31-410.514 to Section 31-410.615 due to the adoption of Section 31-410.612 above. There is no change to the regulation text.

Handbook Section 31-410.615 Renumbered from Sections 31-410.514(a) and (b)

Specific Purpose/Factual Basis

This handbook section is amended to delete the regulation outline numbering of Sections 31-410.514(a) and (b), which will now be referenced as Handbook Section 31-410.615 because it comes immediately after. There are no changes to the handbook text.

Sections 31-410.616 and .616(a) through (d) Renumbered from Sections 31-410.515 and .515(a) through (d)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-410.515 and .515(a) through (d) to Sections 31-410.616 and .616(a) through (d) due to the adoption of Section 31-410.612 above. There is no change to the regulation text.

Handbook Section 31-410.616(d) Renumbered from Section 31-410.52

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-410.52, which will now be referenced as Handbook Section 31-410.616(d) because it comes immediately after. There are no changes to the handbook text.

Sections 31-410.7 and .71 through .76 Renumbered from Sections 31-410.6 and .61 through .66

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-410.6 and .61 through .66 to Sections 31-410.7 and .71 through .76 due to the adoption of Section 31-410.3 above. There is no change to the regulation text.

Section 31-410.8

Specific Purpose:

This section is adopted to clarify placement standards and requirements for Indian children, including for temporary placements.

Factual Basis:

This section is necessary to make specific ICWA placement standards, which must be considered when placing an Indian child in a temporary placement consistent with ICWA at 25 U.S.C. section 1915(b), and WIC section 361.31.

Section 31-410.81

Specific Purpose:

This section is adopted to clarify that the placement of an Indian child must be in the least restrictive setting which is most family like and to take into account the needs of the child.



Factual Basis:

This section is necessary to make specific ICWA placement standards, which must be considered when placing an Indian child in a temporary placement consistent with ICWA at 25 U.S.C. section 1915(b), and WIC section 361.31.

Section 31-410.82

Specific Purpose:

This section is adopted to clarify that the placement of an Indian child must be in reasonable proximity to the child's home, taking into account any special needs of the child.

Factual Basis:

This section is necessary to make specific ICWA placement standards, which must be considered when placing an Indian child in a temporary placement consistent with ICWA at 25 U.S.C. section 1915(b), and WIC section 361.31.

Section 31-410.83

Specific Purpose:

This section is adopted to clarify that the placement of an Indian child the prevailing social and cultural standards of the Indian child's tribe and community in which the parent or extended family members reside or maintain social and cultural ties, shall be applied.

Factual Basis:

This section is necessary to make specific ICWA placement standards, which must be considered when placing an Indian child in a temporary placement consistent with ICWA at 25 U.S.C. section 1915(b) and WIC section 361.31.

Section 31-420.13

Specific Purpose:

This section is adopted to specify the requirement of consideration of an Indian child's tribe and cultural and traditional practices when placing the child into foster care.

Factual Basis:

This section is necessary to assure that a child's needs for tribal affiliation and cultural practices are considered when determining a foster care placement as stated in WIC section 361.31(f).

#### Sections 31-420.14 through .19 Renumbered from Sections 31-420.13 through .18

##### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-420.13 through .18 to Sections 31-420.14 through .19 due to the adoption of Section 31-420.13 above. There is no change to the regulation text.

#### Section 31-420.211

##### Specific Purpose:

This section is amended to specify in the regulations that ICWA placement preference requirements and standards must be applied when placing an Indian child into a foster care placement. This cross references Section 31-420.3, which lays out each of the ICWA placement preference requirements.

##### Factual Basis:

This amendment is necessary to incorporate, make consistent and clarify the duties associated with ICWA placement standards, when placing an Indian child in a foster care placement as specified by ICWA at 25 U.S.C. section 1915(d) and WIC section 361.31.

#### Handbook Section 31-420.211(a) Renumbered from Section 31-420.212

##### Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-420.212, which will now be referenced as Handbook Section 31-420.211(a) because it comes immediately after. The handbook cross references are updated.

#### Section 31-420.212 Renumbered from Section 31-420.213

##### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-420.213 to Section 31-420.212 due to deleting the outline number from the previous Handbook Section 31-420.211(a).

#### Sections 31-420.24 and .241 Renumbered from Sections 31-420.25 and .251

##### Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-420.25 and .251 to Sections 31-420.24 and .241 to correct an outline numbering sequence typo.

### Section 31-420.3

#### Specific Purpose:

This section is adopted to clarify for social workers that California requires active efforts to comply with ICWA placement preferences. This section provides the details of those placement standards and requirements.

#### Factual Basis:

The adoption of this section is necessary to require social workers to engage in active efforts to comply with ICWA placement preferences when placing an Indian child in a foster care placement. ICWA at 25 U.S.C. section 1915(b) sets forth placement preferences, and California at WIC section 361.31 incorporates those preferences but adds at WIC section 361.31(k) active efforts to comply with the preferences..

### Section 31-420.31

#### Specific Purpose:

This section is adopted to specify that social workers must apply the prevailing social and cultural standards of Indian people in meeting the ICWA placement preference requirements.

#### Factual Basis:

This section is necessary to require social workers to follow the specific requirements in the ICWA at 25 U.S.C. section 1915(d) and WIC 361.31(f) which require that the prevailing social and cultural standards of the Indian community in which the parents or extended family reside be applied. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

### Section 31-420.311

#### Specific Purpose:

This section is adopted to specify that social workers must apply the prevailing social and cultural standards of Indian people in meeting the ICWA placement preference requirements may be confirmed by the child's tribe or testimony of a qualified expert witness knowledgeable about the tribe's social and cultural standards.

Factual Basis:

This section is adopted to provide the specific requirements in the ICWA at 25 U.S.C. section 1915(d), as expanded by WIC 361.31(f) which require that the child's tribe or a qualified expert witness, who is knowledgeable regarding the social and cultural standards of the Indian child's tribe, be used to confirm the prevailing social and cultural standards that are applicable of the Indian community in which the parents or extended family reside be applied. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Section 31-420.32

Specific Purpose:

This section is adopted to specify that the social worker must use the services of the Indian child's tribe when available, when seeking a secure placement that meets the ICWA placement preference requirement.

Factual Basis:

The adoption of this section is necessary to specify that consulting with the child's tribe is required and consistent with the specific requirements in the ICWA at 25 U.S.C. section 1915(d) and in WIC section 361.31(g) which requires that the services of the child's tribe must be used, when available, to secure such a placement within the order of placement preference. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Sections 31-420.33, .331 and .331(a) through .331(d)

Specific Purpose:

These sections are adopted to specify the specific placement preference order for placing an Indian child in adoptive or foster care.

Factual Basis:

These sections are adopted to provide the specific requirements in the ICWA at 25 U.S.C. section 1915 and WIC sections 361.31(b) and (c) which require that the Indian child be placed in a family like environment, where a child's special needs can be met, in close proximity to the child's home and in accordance with the placement preferences specified in ICWA or by the child's tribe if it differs. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Section 31-420.332

Specific Purpose:

This section is adopted to specify that a tribe may specify a placement preference and order that differs from the specific placement order, which must be followed, within specific parameters.

Factual Basis:

The adoption of this section is necessary to specify and inform social workers that a child's tribe may specify a placement preference and order that differs from the specific placement order of the ICWA at 25 U.S.C. section 1915(c) and WIC section 361.31(d) as long as it is in the least restrictive setting appropriate to the child's particular needs. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Sections 31-420.333 and .333(a) through .333(d)

Specific Purpose:

These sections are adopted to make clear to social workers the conditions under which any deviation from the placement preference order specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) is acceptable.

Factual Basis:

These sections are necessary to make clear that any deviation from the placement preference order specified in ICWA at 25 U.S.C. sections 1915(a) and (b), and WIC sections 361.31(b) and (c) cannot occur without good cause; and to provide the specific types of good cause considerations. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA placement preference requirements in their child welfare practice.

#### Section 31-420.34

##### Specific Purpose:

This section is adopted to make clear what must occur when no preferred placement as specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) is available.

##### Factual Basis:

This section is necessary to make clear that when no preferred placement as specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) social workers must document active efforts made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe. This is consistent with WIC section 361.31(i). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

#### Section 31-420.35

##### Specific Purpose:

This section is adopted to make clear to social workers that all active efforts to comply with ICWA placement preferences, the records of each placement of an Indian child, and the placement history must be kept indefinitely and made available for review upon request by the Secretary of the Interior or the child's tribe.

##### Factual Basis:

This section is necessary to make clear that a record of each placement of an Indian child and the placement history must be kept in perpetuity, including documentation of each of the active efforts to comply with the placement preference order as specified in ICWA at 25 U.S.C. sections 1915(a) and (b) and WIC sections 361.31(b) and (c). Further, this informs social workers that such placement history must be made available upon request to the Secretary of the Interior and the child's tribe. This is consistent with ICWA at 25 U.S.C. section 1915(e) and WIC section 361.31(k). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

## Section 31-425.12

### Specific Purpose:

This amendment adds the words "tribal affiliation" to the considerations that must be taken into account before placing an Indian child in a permanent placement.

### Factual Basis:

The adoption of this section is necessary to specify ICWA placement standards which must be factored in when considering permanent placement options for an Indian child consistent with ICWA at 25 U.S.C. section 1915(b) and WIC section 361.31.

## Section 31-425.13

### Specific Purpose:

This section is amended to add "Indian custodian" to the list of individuals that must be assessed for capacity to meet the child's specific permanent placement needs.

### Factual Basis:

This section is amended to include an Indian custodian as those whose capacity must be assessed for capability to meet the child's specific needs when considering permanent placement. This makes this section consistent with the language used to describe the child's existing caregiver commonly already responsible for the child's care. Adding the Indian Custodian in particular is consistent with the language of the ICWA at 25 U.S.C. section 1915(b) and WIC section 361.3.

## Handbook Section 31-425.132 Renumbered from Section 31-425.133

### Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Section 31-425.133, which will now be referenced as Handbook Section 31-425.132 because it comes immediately after. There are no changes to the handbook text.

## Section 31-425.133

### Specific Purpose:

This section is adopted to clarify the requirement that when developing the permanent placement plan for an Indian child, the social worker must evaluate the caregiver's (e.g., relative, Indian custodian, etc.) capacity to protect and encourage the retention of the child's tribal connections.

### Factual Basis:

The adoption of this section is necessary to clarify the duties associated with ICWA placement standards, when determining the permanent placement of an Indian child as specified by ICWA at 25 U.S.C. section 1915 and WIC sections 361.31 and 224. WIC section 224 states that the best interest standard in California for Indian children is that the connection to the child's tribe be encouraged and protected regardless of whether the child is in the physical custody of the Indian parent(s) or Indian custodian(s), whether the parental rights of the child's parent has been terminated or regardless of where the child resides. This section assures that retention of tribal connections are protected when it comes time to determine the child's permanent placement and also assures that the tribe's stated placement preference is considered.

#### Sections 31-425.2

##### Specific Purpose:

This section is amended to include the requirement to adhere to ICWA placement preference (which include specific adoption placement) requirements when selecting a permanent placement for an Indian.

##### Factual Basis:

The amendment of this section is necessary to make consistent and clarify the duties associated with ICWA placement standards, when placing an Indian child as specified by ICWA at 25 U.S.C. section 1915 and WIC section 361.31.

#### Section 31-425.21

##### Specific Purpose:

This section is adopted to include the requirement to adhere to ICWA adoptive placement preference which includes specific adoption placement requirements when selecting a permanent placement for an Indian child that may result in the termination of parental rights.

##### Factual Basis:

The adoption of this section is necessary to make consistent and clarify the duties associated with ICWA placement standards when placing an Indian child in a permanent placement as specified by ICWA at 25 U.S.C. section 1915 and WIC section 361.31.



## Section 31-425.22

### Specific Purpose:

This section is adopted to inform and clarify that social workers must follow the ICWA placement preference requirements when selecting a permanent placement of an Indian child.

### Factual Basis:

This section is necessary to make clear that when a permanent placement involves a foster care or guardianship placement, the social worker must adhere to the placement preferences specified in the ICWA placement standards as specified by ICWA at 25 U.S.C. sections 1915(a) and (b); and WIC sections 361.31(b) and (c). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

## Section 31-425.23

### Specific Purpose:

This section is adopted to specify that when selecting a permanent placement for an Indian child, the social worker must consider and consult with the child's tribe as to the option for a Tribal Customary Adoption.

### Factual Basis:

This section is necessary to make clear to social workers that when considering a permanent placement for an Indian child, they must consider and consult with the child's tribe as to the option for Tribal Customary Adoption. This section is consistent with California law as provided in WIC sections 366.22(a) and 366.24(b). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

## Handbook Section 31-425.23

### Specific Purpose/Factual Basis:

This handbook section is adopted to clarify for social workers that Tribal Customary Adoption is a viable option for Indian children as provided in California law at WIC section 366.24. Further, the handbook section clarifies the provisions of the law and specifies that only a tribe can elect Tribal Customary Adoption as a permanency option, although they may also express a different permanency option.

## Section 31-430.2

### Specific Purpose:

This section is amended to include Indian custodians as persons that can voluntarily place an Indian child into foster care.

### Factual Basis:

This amendment is necessary to implement ICWA consent requirements at 25 U.S.C. section 1913 which includes the Indian custodian as an individual who can possibly give consent to place a child.

## Section 31-430.21

### Specific Purpose:

This section is adopted to require social workers, when a voluntary placement involves an Indian child, to inquire as to Indian status, secure the consent in compliance with ICWA at 25 USC section 1913 , and to use mandatory Judicial council forms to confirm inquiry and notice as applicable and further specified in state law.

### Factual Basis:

This section is necessary to require that where a child is being voluntarily placed, inquiry as to whether a child is or may be an Indian child must be made and to require that the inquiry be documented using California Rules of Court, rule 5.481(b), mandatory forms, [ICWA-010(A) "Indian Child Inquiry Attachment"]; asking parents whether the child is an Indian (ICWA-020 "Parental Notification of Indian Status"). This section requires an ICWA inquiry and notice in all voluntary placement cases as required by ICWA 25 U.S.C. section 1913, WIC sections 224.3 and 16507.4, and Family Code section 8620. This section also specifies that consent cannot be given or recorded no less than 10 days after the birth of the child. These forms are incorporated by reference in section 31-003, Definitions-Forms. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

## Sections 31-430.211, .212 and .213

### Specific Purpose:

These sections are adopted to specify where a child is Indian that the consent be taken no less than ten days after the child's birth, it be taken in front of a Judge, that consequences are explained and that the parent or Indian custodian be informed the consent can be withdrawn any time.

Factual Basis:

The adoption of these sections is necessary to comply with ICWA voluntary placement requirements and add consistency regarding the duties associated with a voluntary placement of an Indian child. The ICWA specifies requirements for consents to foster care and adoptive placement involving Indian children at 25 U.S.C. section 1913(a) and (b), and is further set forth in state law at WIC sections 224.3 and 16507.4(b)(3) and Family Code section 8620.

Section 31-430.214

Specific Purpose

This section is added to require that where the child is or may be an Indian child, ICWA noticing must be conducted as specified in Section 31-125.7.

Factual Basis

To avoid duplication a cross reference is made to Section 31-125.7 to assure notice is made when a child is or may be affiliated to a tribe as required under WIC section 224.3 and Family Code section 8620.

Section 31-430.32

Specific Purpose:

This section is amended to include the Indian custodian as persons that the social worker must include in completing the Voluntary Placement Agreements. The social worker must inform them in writing of their responsibilities and their share of the responsibility for the family reunification service costs or if they are eligible to receive services without a fee under specified circumstances.

Factual Basis:

The amendment to this section is necessary to add an Indian custodian as one of the individuals identified on the duties associated with a voluntary placement pursuant to ICWA at 25 U.S.C. sections 1913(a) through (c) and further as set forth in state law in WIC section 16507.4.

Section 31-430.33

Specific Purpose:

This section is amended to include the Indian Custodian as persons that must be assisted in understanding the retention of legal custody and the potential limits of parental consent.

Factual Basis:

The amendment to this section is necessary to add an Indian custodian as one of the individuals identified in the duties associated with a voluntary placement pursuant to ICWA at 25 U.S.C. sections 1913(a) through (c) and further as set forth in state law in WIC section 16507.4.

Section 31-445.12

Specific Purpose:

This section is amended to include Tribally Approved Homes as an option along with relative and non-relative extended family foster homes and to specify the applicable standards and procedures associated by cross referencing Section 31-405.16.

Factual Basis:

The amendment of this section is necessary to provide clarity that an Indian tribe's approval of a home does not require the same licensing approval through CDSS. This is consistent with tribal approval authority specified in ICWA at 25 U.S.C. sections 1915 and 1931 and HSC section 1505. The cross reference to Section 31-405.16 is necessary to further specify the requirements for the evaluation of placements in Tribally Approved Homes as well as incorporating by reference procedures related to criminal and child abuse background checks conducted by tribes, enacted through SB 1460 (Chapter 772, Statutes of 2014) and codified at WIC section 10553.12.

Handbook Section 31-445.13 Renumbered from Sections 31-445.131 through .133

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Sections 31-445.131 through .133, which will now be referenced as Handbook Section 31-445.13 because it comes immediately after. There are no changes to the handbook text.

Section 31-445.2

Specific Purpose:

This section is amended to include and clarify the procedural requirements associated with Tribally Approved Homes and to specify that Tribally Approved Homes are an option along with relative and non-relative extended family foster homes and to specify the applicable standards and procedures associated by cross referencing Section 31-405.16.

#### Factual Basis:

This amendment is necessary to clarify the confusion expressed over what licensing standards are applicable to tribally licensed, approved or specified homes and that Tribally Approved Homes are exempt from Community Care Licensing (Title 22) requirements pursuant to HSC section 1505(o). Further, Tribally Approved Homes are a placement option and are considered the equivalent of a state licensed home pursuant to ICWA at 25 U.S.C. section 1931 and as codified at WIC section 361.2(e)(7).

#### Section 31-510.2

##### Specific Purpose:

This section is amended to begin a list of placement circumstances that do not meet the conditions for applying the Interstate Compact on the Placement of Children (ICPC) and to exclude cases that involve an Indian child that is under the jurisdiction of an Indian court.

#### Factual Basis

This amendment is necessary because this section is exclusive and there has previously been no specification on how the ICPC does or does not apply to Indian children under the specified circumstances. Thus, this amendment begins an exclusive list.

#### Section 31-510.21

##### Specific Purpose:

This section is adopted to include the original language that was deleted from Section 31-510.2 in order to begin this list, which clarifies those placement circumstances that do not meet the conditions for applying the ICPC and to exclude cases that involve an Indian child that is under the jurisdiction of an Indian court. Further, former Section 31-510.21 is renumbered to Section 31-510.211 below.

#### Factual Basis

This section is necessary because it originally applied within Section 31-510.2, still applies and is being moved to create an exclusive list under Section 31-510.2. As provided in Family Code section 7907.3, these sections are adopted to clarify for social workers that the ICPC does not apply between two tribes, or between a compact member and an Indian Tribe that is assuming jurisdiction of the Indian child's case. Tribes are not signatories to the ICPC and its provisions therefore do not apply in the situations specified in the amendments.

#### Section 31-510.211 Renumbered from Section 31-510.21

##### Specific Purpose/Factual Basis:

This section is renumbered from Section 31-510.21 to Section 31-510.211 due to the adoption of Section 31-510.21 above. There is no change to the regulation text.

#### Section 31-510.22, .221 and .222

##### Specific Purpose:

These sections are adopted to clarify those placement circumstances that do not meet the conditions for applying the ICPC and to exclude cases that involve an Indian child that is under the jurisdiction of an Indian court.

##### Factual Basis

These sections are necessary because there has previously been no specification on how the ICPC does or does not apply to Indian children. As provided in Family Code section 7907.3, these sections are adopted to clarify for social workers that the ICPC does not apply between two tribes, or between a compact member and an Indian Tribe that is assuming jurisdiction of the Indian child's case. Tribes are not signatories to the ICPC and its provisions therefore do not apply in the situations specified in the amendments.

## Sections 31-515 and 520, Repealing the entirety of

### Specific Purpose/Factual Basis:

These sections are repealed in their entirety as they now become obsolete with the ICWA related amendments to the rest of Division 31 regulations, integrating the pertinent parts of the previously titled "Special Requirements" Chapter 31-500, sections 31-515 and 31-520. These regulatory sections pertaining to ICWA have not been updated since 1993. Furthermore, minimum federal standards for Indian child custody proceedings required in the ICWA were separated from the rest of Division 31 regulations into Sections 31-515 and 31-520. Current references in Sections 31-515 and 31-520 are no longer sufficient because of the more extensive and/or higher specification of standards enacted by SB 678 (Chapter 838, Statutes of 2006) which incorporated ICWA into the WIC, Family and Probate Codes. In addition, several bills have been passed which have enacted specific areas of child welfare law applicable to Indian children. For example, AB 1325 (Chapter 287, Statutes of 2009) authorized Tribal Customary Adoptions, AB 2418 (Chapter 468, Statutes of 2010) augmented the definition of an Indian child per California law, and SB 1460 (Chapter 772, Statutes of 2014) specifies requirements related to Tribally Approved Homes and the transfer of children to tribes. In addition, federal regulations located at 45 CFR part 1356.67 and codified by SB 1460 (Chapter 772, Statutes of 2014) regarding the transfer of Indian children to tribal Title IV-E programs by state agencies requires county social workers to comply with specified actions upon the transfer of an Indian child to a Title IV-E tribe. In order to assure compliance with these multiple statutory and federal regulatory enactments Division 31 regulations regarding Indian children must be updated.

Moreover, feedback from social workers, tribal representatives and other stakeholders has been that keeping the ICWA related standards and requirements separate from the rest of Division 31, in Sections 31-515 and 31-520, diminishes knowledge, understanding and compliance with ICWA and the cited laws and regulations. The alternatives that CDSS has used have included ACLs or ACINs to inform counties on the above referenced laws and regulations. However, ACLs or ACINs are less effective as they can be overlooked or not uniformly distributed to line staff. Therefore, by incorporating these requirements throughout the regulations for Division 31, clarity and standardized application will be provided to promote compliance with the critical requirements associated with Indian children.

b) Identification of Documents Upon Which Department Is Relying

Indian Child Welfare Act, 25 U.S.C. section 1901, Public Law (PL) 95-608

Title IV-E of the Social Security Act, 42 U.S.C. section 670 et. seq.

Senate Bill 678 (Chapter 838, Statutes of 2006) Pertinent sections: 29, 30, 31, 32, 33, 34, 35, 44, 45, 48, 49, 50, 52, 53, 54 and 55

Assembly Bill 12 (Chapter 559, Statutes of 2010) Pertinent sections: 5, 13, 14 and 66

Assembly Bill 1325 (Chapter 287, Statutes of 2009) Pertinent sections: 6, 7, 12, 15 and 16

Assembly Bill 1695 (Chapter 653, Statutes of 2001) Pertinent sections: 2, 11.3 and 11.6

Assembly Bill 1712 (Chapter 846, Statutes of 2012) Pertinent sections: 4, 15, 15.1, 15.2, 15.3, 21, 23 and 56

Assembly Bill 2417 (Chapter 467, Statutes of 2010)

Assembly Bill 2418 (Chapter 468, Statutes of 2010)

Senate Bill 1460 (Chapter 772, Statutes of 2014) Pertinent sections 6, 8, 12, 14, and 15

California Rules of Court, rule 5.480, 5.481, 5.482, 5.484, 5.690

c) Local Mandate Statement

These regulations do not impose a new mandate on local agencies or on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code, because these regulations make clear existing practice and only make technical and clarifying changes.

d) Statement of Alternatives Considered

The regulations in ICWA related regulations that are in current Sections 31-515 and 31-520, have not been updated since 1993. The alternative used by the Department in lieu of regulation changes has been to issue ACLs or ACINs as part of its duty to keep county social workers informed on requirements associated with the federal ICWA, its incorporation into California statutes, and other legislative enactments or issues associated with Indian children taken into county protective custody. The following are a sampling:

ACIN 1-43-04 (September 2004) ICWA Frequently Asked Questions

ACL 08-02 (January 28, 2008) Senate Bill (SB) 678, (Chapter 838, Statutes of 2006), Indian Child Welfare Changes in State Law

ACIN 1-86-08 (November 20, 2008) Tribally Approved Homes

ACL 10-17 (March 24, 2010) Assembly Bill (AB)1325, Chapter 287, Statutes of 2009, Tribal Customary Adoption

ACIN 1-40-10 (April 29, 2010) Requirement of the Use of an Expert Witness

ACL10-47 (October 27, 2010) Implementation of Tribal Customary Adoption AB 1325, (Chapter 287, Statutes of 2009)

ACL 14-15 (February 14, 2014) Federal Requirements for the Transfer of Indian Children to a Tribal Title IV-E Agency or an Indian Tribe with a Title IV-E Agreement



The CDSS has concluded that compliance and implementation is better served by updating the regulations rather than continue to rely on multiple ACLs or ACINs. Social workers may not always be aware of the ACLs or ACINs and or do not have them readily available. Social workers are expected to work with and follow regulations in their daily work.

In developing the regulatory action, the CDSS also considered and agreed with stakeholders input requesting to integrate the Division 31, Special Requirements, sections 31-515 and 31-520 throughout the Division 31 regulations and to update the regulations. This regulatory action does just that without impact on small business because these regulations apply only to state and local agencies.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as, and less burdensome to affected private persons, than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

There have been no reasonable alternatives presented.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that most businesses providing services to counties under "service funded activities" are already required to provide services to Indian children and families in the same way they serve non-Indian children and families.

f) Economic Impact Assessment

The CDSS has made an initial determination that there is no economic impact on California businesses as a result of this regulatory action because these regulations are only applicable to state and county agencies (i.e., county social workers' activities). The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### *Creation or Elimination of Jobs Within the State of California*

Because these regulations only affect the actions of county child welfare agency staff, the CDSS has made the initial determination that this regulatory action will not have an impact on the creation or elimination of jobs within the state. The proposed regulations will not create or eliminate jobs within the state because they incorporate existing state and federal law, including ICWA, that pertains to Indian children regarding county social workers' actions. Further, technical, conforming changes, such as integrating, renumbering of sections and amending cross references are being incorporated in this regulatory action.

### *Creation or Elimination of Businesses Including Expansion or Elimination of Existing Businesses Within the State of California*

Because these regulations only affect the actions of county child welfare agency staff, the CDSS has made the initial determination that this regulatory action will not have an impact on the creation or elimination of businesses including expansion or elimination of existing businesses within the state. The proposed regulations will not create or eliminate businesses including expansion or elimination of existing businesses within the state because they incorporate existing state and federal law, including ICWA, that pertains to Indian children regarding county social workers' actions. Further, technical, conforming changes, such as integrating, renumbering of sections and amending cross references are being incorporated in this regulatory action.

### *Benefits of the Regulations*

The benefits of these regulations are to update the regulations on changes in laws and provide clarification as to the multiple changes in law and expressed needs from stakeholders for compliance clarification. Although guidance has been given by the Department to counties in the form of ACLs and ACINs, they are not as effective because they are not consolidated into one location, such as the Manual of Policies and Procedures Division 31 regulations. These regulations are expected to bring clarification, consistency and increase compliance on the multiple requirements of law. These changes will also 1) improve the working relationship between the state and California Tribes; 2) promote better collaboration between child welfare agencies and tribes; and 3) produce better outcomes for Indian children that come into contact with California child welfare agencies.

g) Benefits Anticipated from Regulatory Action

Improved State and County compliance with the requirements of the ICWA federal mandates as well as state law regarding child welfare services involving Indian children. The benefits of these regulations are to update the regulations on changes in laws and provide clarification in areas requested. Although guidance has been given by the Department to counties in the form of ACLs or ACINs, they are not as effective because they are often not distributed to all staff nor consolidated into one location where workers can easily access them. These changes will also improve the working relationship between the state and California Tribes; promote better collaboration between child welfare agencies and tribes; and produce better outcomes for Indian children that come into contact with California child welfare agencies.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.